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sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

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Subpart A—General Provisions

§ 3010.1 Definitions.

(a) The definitions in paragraphs (b) through (m) of this section apply in this part.

(b) *Annual limitation* means:

(1) In the case of a notice of a Type 1–A or Type 1–B rate adjustment filed 12 or more months after the last Type 1–A or Type 1–B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to § 3010.21;

(2) In the case of a notice of a Type 1–A or Type 1–B rate adjustment filed less than 12 months after the last Type 1–A or Type 1–B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to § 3010.22; and

(3) In the case of a notice of a Type 1–C rate adjustment, the annual limitation calculated pursuant to § 3010.21 or § 3010.22, as applicable, for the most recent notice of a Type 1–A or Type 1–B rate adjustment.

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(c) *Class* means a class of market dominant postal products.

(d) *De minimis rate increase* means a rate adjustment described in § 3010.30.

(e) *Maximum rate adjustment* means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type 1-A or Type 1-B rate adjustment. The maximum rate adjustment is calculated in accordance with § 3010.20.

(f) *Most recent Type 1-A or Type 1-B notice of rate adjustment*, when used in reference to a notice of rate adjustment for a class, means the most recent Type 1-A or Type 1-B notice of rate adjustment for that class.

(g) *Rate of general applicability* means a rate applicable to all mail meeting standards established by the Mail Classification Schedule, the Domestic Mail Manual, and the International Mail Manual. A rate is not a rate of general applicability if eligibility for the rate is dependent on factors other than the characteristics of the mail to which the rate applies. A rate is not a rate of general applicability if it benefits a single mailer. A rate that is only available upon the written agreement of both the Postal Service and a mailer, a group of mailers, or a foreign postal operator is not a rate of general applicability.

(h) *Type 1-A rate adjustment* means a rate adjustment described in § 3010.4.

(i) *Type 1-B rate adjustment* means a rate adjustment described in § 3010.5.

(j) *Type 1-C rate adjustment* means a rate adjustment described in § 3010.6.

(k) *Type 2 rate adjustment* means a rate adjustment described in § 3010.7.

(l) *Type 3 rate adjustment* means a rate adjustment described in § 3010.8.

(m) *Unused rate adjustment authority* means:

(1) In the case of a Type 1-A or Type 1-B rate adjustment, the percentage calculated pursuant to § 3010.26; and

(2) In the case of a Type 1-C rate adjustment, the percentage calculated pursuant to § 3010.27.

[79 FR 33831, June 12, 2014]

§ 3010.2 Applicability.

The rules in this part implement provisions in 39 U.S.C. chapter 36, subchapter I, establishing rate setting policies and procedures for market

dominant products. With the exception of Type 3 rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service's planned rate adjustments. Type 3 rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33831, June 12, 2014]

§ 3010.3 Types of rate adjustments for market dominant products.

(a) There are five types of rate adjustments for market dominant products. A Type 1-A rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(D). A Type 1-B rate adjustment is authorized under 39 U.S.C. 3622(d)(2)(C). A Type 1-C rate adjustment is authorized under 39 U.S.C. 3622. A Type 2 rate adjustment is authorized under 39 U.S.C. 3622(c)(10). A Type 3 rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(E).

(b)(1) The Postal Service may combine Type 1-A, Type 1-B, and Type 2 rate adjustments for purposes of filing with the Commission.

(2) The Postal Service may not combine a Type 1-C rate adjustment with any other type of rate adjustment. The Postal Service may file a Type 1-C rate adjustment and a *de minimis* rate increase contemporaneously, but the Type 1-C rate adjustment and the *de minimis* rate increase must be contained in separate notices of rate adjustment.

[79 FR 33832, June 12, 2014]

§ 3010.4 Type 1-A rate adjustment—in general.

(a) A Type 1-A rate adjustment is an adjustment based on the annual limitation.

(b) A Type 1-A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(c) A Type 1-A rate adjustment for any class that is less than the applicable annual limitation results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent rate adjustment

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for that class, subject to the expiration terms in § 3010.26(e).

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33832, June 12, 2014]

§ 3010.5 Type 1-B rate adjustment—in general.

A Type 1-B rate adjustment is an adjustment that is based on the annual limitation and that uses unused rate adjustment authority in whole or in part.

[79 FR 33832, June 12, 2014]

§ 3010.6 Type 1-C rate adjustment—in general.

(a) A Type 1-C rate adjustment is an adjustment to a rate of general applicability that contains only a decrease. A rate adjustment that includes both an increase and a decrease in rates of general applicability is a Type 1-A or Type 1-B rate adjustment; it is not a Type 1-C rate adjustment.

(b)(1) Except as provided in paragraph (b)(2) of this section, a Type 1-C rate adjustment may generate unused rate adjustment authority, as described in § 3010.27.

(2) A Type 1-C rate adjustment filed immediately after a Type 3 rate adjustment (that is, with no intervening Type 1-A or Type 1-B rate adjustment) may not generate unused rate adjustment authority.

(3) The Postal Service may elect not to generate unused rate adjustment authority in a Type 1-C rate adjustment.

[79 FR 33832, June 12, 2014]

§ 3010.7 Type 2 rate adjustment—in general.

A Type 2 rate adjustment is based on a negotiated service agreement. A negotiated service agreement entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33832, June 12, 2014]

§ 3010.8 Type 3 rate adjustment—in general.

(a) A Type 3 rate adjustment is a rate adjustment that is authorized only when justified by exceptional or extraordinary circumstances.

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(b) A Type 3 rate adjustment is not subject to the annual limitation or the restrictions on the use of unused rate adjustment authority, and does not implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33832, June 12, 2014]

§ 3010.9 Schedule for Regular and Predictable Rate Adjustments.

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Adjustments. The Commission shall display the Schedule for Regular and Predictable Rate Adjustments on the Commission Web site, <http://www.prc.gov>.

(b) The Schedule for Regular and Predictable Rate Adjustments shall provide mailers with estimated implementation dates for future Type 1-A rate adjustments for each separate class of mail, should such adjustments be necessary and appropriate. Rate adjustments will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Adjustments shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate adjustments.

(d) The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the Schedule for Regular and Predictable Rate Adjustments.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide a succinct explanation for such variation with its Type 1-A filing. No explanation is required

for variations involving smaller than predicted rate adjustments.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33832, June 12, 2014]

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1-A and 1-B Rate Adjustments)

§ 3010.10 Notice.

(a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1-A, Type 1-B, or Type 1-C rate adjustment for a class shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 45 days prior to the intended implementation date of the rate adjustment; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date of the rate adjustment.

(b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended rate adjustments include classification changes or operations changes likely to have a material impact on mailers.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33832, June 12, 2014]

§ 3010.11 Proceedings for Type 1-A, Type 1-B, and Type 1-C rate adjustment filings.

(a) The Commission will establish a docket for each notice of Type 1-A, Type 1-B, or Type 1-C rate adjustment filing, promptly publish notice of the filing in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 20 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) Public comments should focus primarily on whether planned rate adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter I:

(1) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the annual limitation calculated under §§ 3010.21 or 3010.22, as applicable; and

(2) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the limitation established in § 3010.29.

(c) Public comments may also address other relevant statutory provisions and applicable Commission orders and directives.

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under § 3010.21 or § 3010.22, as applicable, the limitation set forth in § 3010.29, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

(e) If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Governors.

(f) If planned rate adjustments are found inconsistent with applicable law by the Commission, the Postal Service will submit an amended notice of rate adjustment that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(g) The Commission will post any amended notice of rate adjustment filing on its Web site and allow a period of 7 days from the date of the filing for public comment. Comments in the amended notice of rate adjustment

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should address the subjects identified in paragraph (b) of this section and may address the subjects identified in paragraph (c) of this section.

(h) The Commission will review any amended notice of rate adjustment together with any comments filed for compliance and within 14 days issue an order announcing its findings.

(i) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(j) If the planned rate adjustments in an amended notice of rate adjustment are found to be inconsistent with applicable law, the Commission shall explain the basis of its determination and suggest an appropriate remedy.

(k) A Commission finding that a planned Type 1–A, Type 1–B, or Type 1–C rate adjustment is in compliance with the annual limitation calculated under § 3010.21 or § 3010.22, as applicable; the limitation set forth in § 3010.29; and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned Type 1–A, Type 1–B, or Type 1–C rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter I is provisional and subject to subsequent review.

[78 FR 52704, Aug. 26, 2013, as amended by Order 1786, 78 FR 67952, Nov. 13, 2013; 79 FR 33832, June 12, 2014]

§ 3010.12 Contents of notice of rate adjustment.

(a) A Type 1–A, Type 1–B, or Type 1–C notice of rate adjustment must include the following information:

(1) A schedule of the planned rates;

(2) The planned effective date(s) of the planned rates;

(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and

(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) The notice of rate adjustment shall be accompanied by the following information:

(1) The annual limitation calculated as required by § 3010.21 or § 3010.22, as appropriate. This information must be supported by workpapers in which all calculations are shown and all input values, including all relevant CPI–U values, are listed with citations to the original sources.

(2) A schedule showing unused rate adjustment authority available for each class of mail displayed by class and available amount for each of the preceding 5 years. This information must be supported by workpapers in which all calculations are shown.

(3) The percentage change in rates for each class of mail calculated as required by § 3010.23. This information must be supported by workpapers in which all calculations are shown and all input values, including current rates, new rates, and billing determinants, are listed with citations to the original sources.

(4) The amount of new unused rate adjustment authority, if any, that will be generated by the rate adjustment calculated as required by § 3010.26 or § 3010.27, as applicable. All calculations are to be shown with citations to the original sources. If new unused rate adjustment authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment.

(5) A schedule of the workshare discounts included in the planned rates, and a companion schedule listing the avoided costs that underlie each such discount. This information must be supported by workpapers in which all calculations are shown and all input values are listed with citations to the original sources.

(6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs.

(7) A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).

(8) A discussion that demonstrates the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629.

(9) For a notice that includes a rate incentive:

(i) If the rate incentive is a rate of general applicability, sufficient information to demonstrate that the rate incentive is a rate of general applicability; and

(ii) Whether the Postal Service has excluded the rate incentive from the calculation of the percentage change in rates under § 3010.23(e) or § 3010.24.

(10) For a Type 1-C rate adjustment, whether the Postal Service elects to generate unused rate adjustment authority.

(11) A schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments.

(12) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.

(c) Whenever the Postal Service establishes a new workshare discount rate, it must include with its filing:

(1) A statement explaining its reasons for establishing the discount;

(2) All data, economic analyses, and other information relied on to justify the discount; and

(3) A certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d) Whenever the Postal Service establishes a new discount or surcharge it does not believe is a workshare discount, it must include with its filing:

(1) An explanation of the basis for its belief that the discount or surcharge is not a workshare discount; and

(2) A certification that the Postal Service applied approved analytical principles to the discount or surcharge.

(e) The notice of rate adjustment shall identify for each affected class how much existing unused rate adjustment authority is used in the planned rates calculated as required by § 3010.28. All calculations are to be shown, including citations to the original sources.

(f) All cost, avoided cost, volume, and revenue figures submitted with the notice of rate adjustment shall be developed from the most recent applicable Commission approved analytical principles.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33832, June 12, 2014]

Subpart C—Rules for Determining the Maximum Rate Adjustment

§ 3010.20 Calculation of maximum rate adjustment.

(a) Rate adjustments for each class of market dominant products in any 12-month period are limited.

(b) Type 1-A and Type 1-B rate adjustments are subject to an inflation-based annual limitation computed using CPI-U values as detailed in §§ 3010.21(a) and 3010.22(a).

(c) An exception to the annual limitation allows a limited annual recapture of unused rate adjustment authority. The amount of unused rate adjustment authority is measured separately for each class.

(d) In any 12-month period the maximum rate adjustment applicable to a class is:

(1) For a Type 1-A notice of rate adjustment, the annual limitation for the class; and

(2) For a Type 1-B notice of rate adjustment, the annual limitation for the class plus the unused rate adjustment authority for the class that the Postal Service elects to use, subject to the limitation under § 3010.29.

(e) There is no limitation on the amount of a rate decrease contained in a notice of Type 1-C rate adjustment.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33833, June 12, 2014]

§ 3010.21 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are 12 or more months apart.

(a) The monthly CPI–U values needed for the calculation of the full year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is “CUUR0000SA0.”

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed 12 or more months after the most recent Type 1–A or Type 1–B notice of rate adjustment, then the calculation of an annual limitation for the class (referred to as the *full year limitation*) involves three steps. First, a simple average CPI–U index is calculated by summing the most recently available 12 monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI–U index is similarly calculated by summing the 12 monthly CPI–U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the full year limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(c) The formula for calculating a full year limitation for a notice of rate adjustment filed 12 or more months after the last notice is as follows: Full Year Limitation = (Recent Average/Base Average) – 1.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33833, June 12, 2014]

§ 3010.22 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are less than 12 months apart.

(a) The monthly CPI–U values needed for the calculation of the partial year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982 – 84 = 100. The current Series ID for the index is “CUUR0000SA0.”

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed less than 12 months after the most recent Type 1–A or Type 1–B notice of rate adjustment, then the annual limitation for the class (referred to as the *partial year limitation*) will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(c) The applicable partial year limitation is calculated in two steps. First, a simple average CPI–U index is calculated by summing the 12 most recently available monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(d) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 12 months after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) – 1.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33833, June 12, 2014]

§ 3010.23 Calculation of percentage change in rates.

(a) *Definitions.* In this section:

(1) *Current rate*—(i) *In general.* Except as provided in paragraphs (a)(1)(ii) and (iii) of this section, the term *current rate* means the rate in effect when the Postal Service files the notice of rate adjustment.

(ii) *Seasonal and temporary rates.* When used with respect to a seasonal or temporary rate, as described in paragraph (a)(2) of this section, the term *current rate* means the most recent rate in effect for the rate cell, regardless of whether the seasonal or temporary rate is available at the time the Postal Service files the notice of rate adjustment.

(iii) *Exception.* When used with respect to a rate cell that corresponds to a rate incentive that was previously excluded from the calculation of the percentage change in rates under paragraph (e)(1) of this section, the term *current rate* means the full undiscounted rate in effect for the rate cell at the time of the filing of the notice of rate adjustment, not the discounted rate in effect for the rate cell at such time. For example, if a rate incentive provides a 5-cent discount on a 25-cent rate and the Postal Service previously elected to exclude the rate incentive from the calculation of the percentage change in rates, the Postal Service may choose to begin including the discounted rate in its calculation of the percentage change in rates. If the Postal Service makes that choice, the current rate for the discounted rate cell will be 25 cents (the full undiscounted rate).

(2) *Rate cell.* The term *rate cell* means each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. A seasonal or temporary rate shall be identified and treated as a rate cell separate and distinct from the corresponding non-seasonal or permanent rate.

(3) *Rate incentive* means a discount that is not a workshare discount and that is designed to increase or retain volume, improve the value of mail for mailers, or improve the operations of the Postal Service.

(b) *Calculation—(1) Type 1-A and Type 1-B rate adjustments.* For a Type 1-A or Type 1-B rate adjustment, for each class of mail and product within the class, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and the resulting products are summed. Then, the same set of rate cell volumes are multiplied by the corresponding current rate for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(2) *Type 1-C rate adjustments.* For a Type 1-C rate adjustment, for each class of mail and product within the class, the percentage change in rates is calculated by amending the workpapers attached to the Commission's order relating to the most recent Type 1-A or Type 1-B notice of rate adjustment to replace the planned rates under the most recent Type 1-A or Type 1-B notice of rate adjustment with the corresponding planned rates applicable to the class from the Type 1-C notice of rate adjustment.

(c) *Formula.* The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

Percentage change in rates =

$$\left(\frac{\sum_{i=1}^N (R_{i,n})(V_i)}{\sum_{i=1}^N (R_{i,c})(V_i)} \right) - 1$$

Where,

N = number of rate cells in the class

i = denotes a rate cell (i = 1, 2, . . . , N)

R_{i,n} = planned rate of rate cell i

R_{i,c} = current rate of rate cell i (for a Type 1-A or Type 1-B rate adjustment) or rate from most recent Type 1-A rate adjustment for rate cell i (for a Type 1-C rate adjustment)

V_i = volume of rate cell i

(d) *Volumes—(1) Obtaining Volumes from billing determinants.* The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants.

(2) *Permissible adjustments.* The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

(3) *Basis for adjustments.* Whenever possible, adjustments shall be based on known mail characteristics or historical volume data, as opposed to forecasts of mailer behavior.

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(4) *Adjustment for deletion of rate cell when alternate rate cell is not available.* For an adjustment accounting for the effects of the deletion of a rate cell when an alternate rate cell is not available, the Postal Service should adjust the billing determinants associated with the rate cell to zero. If the Postal Service does not adjust the billing determinants for the rate cell to zero, the Postal Service shall include a rationale for its treatment of the rate cell with the information required under paragraph (d)(2) of this section.

(e) *Treatment of rate incentives.* (1) Rate incentives may be excluded from a percentage change in rates calculation. If the Postal Service elects to exclude a rate incentive from a percentage change in rates calculation, the rate incentive shall be treated in the same manner as a rate under a negotiated service agreement (as described in § 3010.24).

(2) A rate incentive may be included in a percentage change in rates calculation if it meets the following criteria:

(i) The rate incentive is in the form of a discount or can be easily translated into a discount;

(ii) Sufficient billing determinants are available for the rate incentive to be included in the percentage change in rate calculation for the class, which may be adjusted based on known mail characteristics or historical volume data (as opposed to forecasts of mailer behavior); and

(iii) The rate incentive is a rate of general applicability.

[79 FR 33833, June 12, 2014]

§ 3010.24 Treatment of volume associated with negotiated service agreements and rate incentives that are not rates of general applicability.

(a) Mail volumes sent at rates under a negotiated service agreement or a rate incentive that is not a rate of general applicability are to be included in the calculation of percentage change in rates under § 3010.23 as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (e.g., because unique rate categories are created for a mailer), the volumes associated with the mail sent

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under the terms of the negotiated service agreement or the rate incentive that is not a rate of general applicability shall be excluded from the calculation of percentage change in rates.

(b) The Postal Service shall identify and explain all assumptions it makes with respect to the treatment of negotiated service agreements and rate incentives that are not rates of general applicability in the calculation of the percentage change in rates and provide the rationale for its assumptions.

[79 FR 33834, June 12, 2014]

§ 3010.25 Limitation on application of unused rate adjustment authority.

Unused rate adjustment authority may only be applied after applying the annual limitation calculated pursuant to § 3010.21 or § 3010.22.

§ 3010.26 Calculation of unused rate adjustment authority for Type 1-A and Type 1-B rate adjustments.

(a) Unused rate adjustment authority accrues during the entire period between notices of Type 1-A and Type 1-B rate adjustments. When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, the unused rate adjustment authority is the annual unused rate adjustment authority calculated under paragraph (b) of this section. When notices of Type 1-A or Type 1-B rate adjustments are filed more than 12 months apart, unused rate adjustment authority is the sum of the annual unused rate adjustment calculated under paragraph (b) of this section plus the interim unused rate adjustment authority calculated under paragraph (c)(2) of this section, less any interim unused rate adjustment authority used in accordance with paragraph (d) of this section.

(b) When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, annual unused rate adjustment authority will be calculated. Annual unused rate adjustment authority for a class is equal to the difference between the annual limitation calculated pursuant to § 3010.21 or § 3010.22 and the percentage change in rates for the class calculated pursuant to § 3010.23(b)(1).

(c)(1) When notices of Type 1-A or Type 1-B rate adjustments are filed

more than 12 months apart, annual unused rate adjustment authority will be calculated for the 12-month period ending on the date on which the second notice is filed and interim unused rate adjustment authority will be calculated for the period beginning on the date the first notice is filed and ending on the day before the date that is 12 months before the second notice is filed.

(2) Interim unused rate adjustment authority is equal to the Base Average applicable to the second notice of rate adjustment (as developed pursuant to §3010.21(b)) divided by the Recent Average utilized in the first notice of rate adjustment (as developed pursuant to §3010.21(b)) and subtracting 1 from the quotient. The result is expressed as a percentage.

(d) Interim unused rate adjustment authority may be used to make a rate adjustment pursuant to the notice of rate adjustment that led to its calculation. If interim unused rate adjustment authority is used to make such a rate adjustment, the interim unused rate adjustment authority generated pursuant to the notice shall first be added to the schedule of unused rate adjustment authority devised and maintained under paragraph (f) of this section as the most recent entry. Then, any interim unused rate adjustment authority used in accordance with this paragraph shall be subtracted from the existing unused rate adjustment authority using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

(e) Unused rate adjustment authority generated under this section lapses 5 years after the date of filing of the notice of rate adjustment leading to its calculation.

(f) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority for that class.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33834, June 12, 2014]

§ 3010.27 Calculation of unused rate adjustment authority for Type 1-C rate adjustments.

(a) For a notice of Type 1-C rate adjustment, unused rate adjustment authority for a class is calculated in two steps. First, the difference between the annual limitation calculated pursuant to §3010.21 or §3010.22 for the most recent notice of Type 1-A or Type 1-B rate adjustment and the percentage change in rates for the class calculated pursuant to §3010.23(b)(2) is calculated. Second, the unused rate adjustment authority generated in the most recent Type 1-A or Type 1-B rate adjustment is subtracted from that result.

(b) Unused rate adjustment authority generated under paragraph (a) of this section lapses 5 years after the date of filing of the most recent notice of Type 1-A or Type 1-B rate adjustment.

(c) Unused rate adjustment authority generated under paragraph (a) of this section for a class shall be added to the unused rate adjustment authority generated in the most recent notice of Type 1-A rate adjustment on the schedule maintained under §3010.26(f). For purposes of §3010.28, the unused rate adjustment authority generated under paragraph (a) of this section for a class shall be deemed to have been added to the schedule maintained under §3010.26(f) on the same date as the most recent notice of Type 1-A or Type 1-B rate adjustment.

(d) Unused rate adjustment authority generated under paragraph (a) of this section shall be subject to the limitation under §3010.29, regardless of whether it is used alone or in combination with other existing unused rate adjustment authority.

[79 FR 33834, June 12, 2014]

§ 3010.28 Application of unused rate adjustment authority.

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates for the class and the annual limitation shall be subtracted from the existing unused rate adjustment authority for the class, using a first-in,

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first-out (FIFO) method, beginning 5 years before the instant notice.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33834, June 12, 2014]

§ 3010.29 Maximum size of Type 1-B rate adjustments.

Unused rate adjustment authority used to make a Type 1-B rate adjustment for any class in any 12-month period may not exceed 2 percentage points.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33834, June 12, 2014]

§ 3010.30 De minimis rate increases.

(a) The Postal Service may elect to file a Type 1-A notice of rate adjustment as a *de minimis* rate increase if:

(1) For each affected class, the rate increases contained within the notice of a Type 1-A rate adjustment do not result in the percentage change in rates for the class equaling or exceeding 0.001 percent; and

(2) For each affected class, the sum of all rate increases included in *de minimis* rate increases since the most recent Type 1-A, Type 1-B, or Type 3 rate adjustment that was not a *de minimis* rate increase does not result in the percentage change in rates for the class equaling or exceeding 0.001 percent.

(b) No unused rate adjustment authority will be added to the schedule of unused rate adjustment authority maintained under § 3010.26(f) as a result of a *de minimis* rate increase.

(c) No rate decreases may be taken into account when determining whether rate increases comply with paragraphs (a)(1) and (2) of this section.

(d) In the next notice of a Type 1-A or Type 1-B rate adjustment for a class that is not a *de minimis* rate increase:

(1) The annual limitation shall be calculated as if the *de minimis* rate increase had not been filed; and

(2) For purposes of calculating the percentage change in rates, the current rate shall be the current rate from the *de minimis* rate increase.

(e) The Postal Service shall file supporting workpapers with each notice of *de minimis* rate increase that demonstrate that the sum of all rate increases included in *de minimis* rate increases since the most recent Type 1-A, Type 1-B, or Type 3 notice of rate ad-

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justment that was not *de minimis* does not result in a *percentage* change in rates for the class equaling or exceeding 0.001 percent.

[79 FR 33834, June 12, 2014]

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

§ 3010.40 Negotiated service agreements.

(a) In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10). Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or

(2) Enhance the performance of operational functions (39 U.S.C. 3622(c)(10)(A)(ii)).

(b) Negotiated service agreements may not cause unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

(c) Negotiated service agreements must be available on public and reasonable terms to similarly situated mailers.

§ 3010.41 Notice.

The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 2 rate adjustment for a market dominant postal product shall provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and transmit a notice of agreement to the Commission no later than 45 days prior to the intended implementation date.

§ 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.

Whenever the Postal Service proposes to establish or change rates, fees, or the Mail Classification Schedule

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based on a negotiated service agreement, the Postal Service shall file with the Commission a notice of agreement that shall include at a minimum the following information:

(a) A copy of the negotiated service agreement;

(b) The planned effective date(s) of the planned rates;

(c) A representation or evidence that public notice of the planned rate adjustments has been issued or will be issued at least 45 days before the effective date(s) for the planned rates;

(d) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission;

(e) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement;

(f) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall be based on accepted analytical principles. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:

(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;

(2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;

(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement;

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs; and

(5) If the Postal Service believes the Commission's accepted analytical principles are not the most accurate and reliable methodology available:

(i) An explanation of the basis for that belief; and

(ii) A projection of the change in net financial position resulting from the agreement made using the Postal Service's alternative methodology.

(g) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement;

(h) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace; and

(i) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.

[78 FR 52704, Aug. 26, 2013, as amended by Order 1786, 78 FR 67952, Nov. 13, 2013]

§ 3010.43 Data collection plan and report.

(a) The Postal Service shall include with any notice of agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10).

(b) A data report under the plan is due 60 days after each anniversary date of implementation and shall include, at a minimum, the following information for each 12-month period the agreement has been in effect:

(1) The change in net financial position of the Postal Service as a result of the agreement. This calculation shall include for each year of the agreement:

(i) The actual mailer-specific costs, volumes, and revenues of the Postal Service;

(ii) An analysis of the effects of the negotiated service agreement on the net overall contribution to the institutional costs of the Postal Service; and

(iii) If mailer-specific costs are not available, the source and derivation of

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the costs that are used shall be provided, including a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

(2) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement.

(3) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

§ 3010.44 Proceedings for Type 2 rate adjustments.

(a) The Commission will establish a docket for each notice of Type 2 rate adjustment filed, promptly publish notice of the filing in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 10 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission shall review the planned Type 2 rate adjustments and the comments thereon, and issue an order announcing its findings. So long as such adjustments are not inconsistent with 39 U.S.C. 3622, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(c) Commission findings that a planned Type 2 rate adjustment is not

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inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review.

Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)

§ 3010.60 Applicability.

The Postal Service may request to adjust rates for market dominant products in excess of the maximum rate adjustment due to extraordinary or exceptional circumstances. In this subpart, such requests are referred to as *exigent requests*.

§ 3010.61 Contents of exigent requests.

(a) Each exigent request shall include the following:

(1) A schedule of the proposed rates;

(2) Calculations quantifying the increase for each affected product and class;

(3) A full discussion of the extraordinary or exceptional circumstances giving rise to the request, and a complete explanation of how both the requested overall increase and the specific rate adjustments requested relate to those circumstances;

(4) A full discussion of why the requested rate adjustments are necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;

(5) A full discussion of why the requested rate adjustments are reasonable and equitable as among types of users of market dominant products;

(6) An explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent rate adjustments in whole or in part;

(7) An analysis of the circumstances giving rise to the exigent request, which should, if applicable, include a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action; and

(8) Such other information as the Postal Service believes will assist the

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Commission to issue a timely determination of whether the requested rate adjustments are consistent with applicable statutory policies.

(b) The Postal Service shall identify one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification related to each topic specified in paragraph (a) of this section.

§ 3010.62 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide information in addition to that called for by § 3010.61 in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate adjustments requested.

§ 3010.63 Treatment of unused rate adjustment authority.

(a) Each exigent request will identify the unused rate adjustment authority available as of the date of the request for each class of mail and the available amount for each of the preceding 5 years.

(b) Pursuant to an exigent request, rate adjustments may use existing unused rate adjustment authority in amounts greater than the limitation described in § 3010.28 of this subpart.

(c) Exigent increases will exhaust all unused rate adjustment authority for each class of mail before imposing additional rate adjustments in excess of the maximum rate adjustment for any class of mail.

§ 3010.64 Expedient treatment of exigent requests.

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.

§ 3010.65 Special procedures applicable to exigent requests.

(a) The Commission will establish a docket for each exigent request, promptly publish notice of the request

in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A specified period for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission will hold a public hearing on the Postal Service request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service's request and the supporting information provided in response to the topics specified in § 3010.61(a).

(c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with § 3001.9 of this chapter, and will become part of the administrative record of the proceeding.

(d) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and completeness of the supporting materials provided with the request.

(e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

(f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:

(1) The sufficiency of the justification for an exigent rate adjustment;

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(2) The adequacy of the justification for adjustments in the amounts requested by the Postal Service; and

(3) Whether the specific rate adjustments requested are reasonable and equitable.

(g) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

§ 3010.66 Deadline for Commission decision.

The Commission will act expeditiously on the Postal Service request, taking into account all written comments. In every instance a Commission decision will be issued within 90 days of the filing of an exigent request.

PART 3015—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

Sec.

3015.1 Scope.

3015.2 Changes in rates of general applicability.

3015.3 Decrease in rates of general applicability.

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3015.6 Sufficiency of information.

3015.7 Standards for compliance.

AUTHORITY: 39 U.S.C. 503; 3633.

SOURCE: 72 FR 63697, Nov. 9, 2007, unless otherwise noted.

§ 3015.1 Scope.

Rules in this part are applicable to competitive products.

§ 3015.2 Changes in rates of general applicability.

(a) When the Postal Service determines to change a rate or rates of general applicability, it shall file notice of the change with the Commission no later than the date of publication of the decision in the FEDERAL REGISTER concerning such change, but at least 30 days before the effective date of the change.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and a schedule of the changed rates.

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§ 3015.3 Decrease in rates of general applicability.

(a) When the Postal Service determines to change a rate or rates of general applicability for any competitive product that results in a decrease in the average rate of that product, it shall file notice of the change with the Commission no later than the date of publication of the decision in the FEDERAL REGISTER concerning such change, but at least 30 days before the effective date of the change.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and a schedule of the changed rates.

(c) In addition to the notice, the Postal Service shall file with the Commission:

(1) Sufficient revenue and cost data for the 12-month period following the effective date of the rate to demonstrate that each affected competitive product will be in compliance with 39 U.S.C. 3633(a)(2); and

(2) A certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).

§ 3015.4 Change in class of general applicability.

(a) In the case of a change in class of general applicability, the Postal Service shall file notice of the change with the Commission no later than the date of publication of the decision in the FEDERAL REGISTER, but at least 30 days before the effective date of the increase.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and the record of proceedings regarding such decision.

§ 3015.5 Rate or class not of general applicability.

(a) When the Postal Service determines to add or change a rate or class not of general applicability, it shall file notice of its decision with the Commission at least 15 days before the effective date of the change.