

(ii) Quantitative analysis or, if not available, qualitative analysis indicating the expected size of the rate increase that is claimed would result in the rates paid by mailers not able to take advantage of the discount.

(iii) How setting the excessive workshare discount in compliance with § 3030.283(c) or the low workshare discount for a non-compensatory product in compliance with § 3030.284(c) or (e), whichever is applicable, would result in a further increase in the rates paid by mailers not able to take advantage of the discount.

(8) Any other relevant factors or reasons to support the application for waiver.

(d) Unless the Commission otherwise provides, commenters will be given at least 7 calendar days to respond to the application for waiver after it has been filed by the Postal Service.

(e) To better evaluate the waiver application, the Commission may, on its own behalf or by request of any interested person, order the Postal Service to provide experts on the subject matter of the waiver application to participate in technical conferences, prepare statements clarifying or supplementing their views, or answer questions posed by the Commission or its representatives.

(f) For a proposed workshare discount that would exceed the cost avoided by the Postal Service for not providing the applicable service, the application for waiver shall be granted only if at least one provision appearing in 39 U.S.C. 3622(e)(2)(A) through (e)(2)(D) or 39 U.S.C. 3622(e)(3)(A) through (e)(3)(B) is determined to apply.

(g) For a proposed workshare discount that would be set below the cost avoided by the Postal Service for not providing the applicable service, the application for waiver shall be granted only if setting the workshare discount closer or equal to the cost avoided by the Postal Service for not providing the applicable service would impede the efficient operation of the Postal Service or if increasing or eliminating a low workshare discount for a non-compensatory product would result in a further increase in the rates paid by

mailers not able to take advantage of the workshare discount.

(h) The Commission will issue an order announcing, at a minimum, whether the requested waiver will be granted or denied no later than 21 days following the close of any comment period(s). An order granting the application for waiver shall specify all conditions upon which the waiver is granted, including the date upon which the waiver shall expire.

## PART 3035—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

### Sec.

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3035.104 Change in class of general applicability.

3035.105 Rate or class not of general applicability.

3035.106 Sufficiency of information.

3035.107 Standards for compliance.

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

SOURCE: 72 FR 63697, Nov. 9, 2007, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

### § 3035.101 Scope.

Rules in this part are applicable to competitive products.

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

### § 3035.102 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.

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

## Postal Regulatory Commission

## § 3035.107

### § 3035.103 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).

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

### § 3035.104 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.

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

### § 3035.105 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.

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

(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 or class 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).

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

### § 3035.106 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the Commission determines additional information is necessary to enable it to evaluate whether competitive products will be in compliance with 39 U.S.C. 3633(a), it may, in its discretion, require the Postal Service to provide additional information as deemed necessary.

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

### § 3035.107 Standards for compliance.

For purposes of determining competitive products' compliance with 39 U.S.C. 3633, the Commission will apply the following standards:

(a) Incremental costs will be used to test for cross-subsidies by market dominant products of competitive products. To the extent that incremental cost data are unavailable, the Commission

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will use the sum of competitive products' volume-variable costs and product-specific costs supplemented to include causally related, group-specific costs to test for cross-subsidies.

(b) Each competitive product must recover its attributable costs as defined in 39 U.S.C. 3631(b). Pursuant to 39 U.S.C. 3631(b), the Commission will calculate a competitive product's attributable costs as the sum of its volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product's incremental costs.

(c)(1) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively, at a minimum, will be calculated using the following formula:

$$AS_{t+1} = AS_t * (1 + \% \Delta CCM_{t-1} + CGD_{t-1})$$

Where,

AS = Appropriate Share, expressed as a percentage and rounded to one decimal place

CCM = Competitive Contribution Margin

CGD = Competitive Growth Differential

t = Fiscal Year

If t = 0 = FY 2007, AS = 5.5 percent

(2) The Commission shall, as part of each Annual Compliance Determination, calculate and report competitive products' appropriate share for the upcoming fiscal year using the formula set forth in paragraph (c)(1) of this section.

[72 FR 63697, Nov. 9, 2007, as amended at 81 FR 88123, Dec. 7, 2016; 84 FR 539, Jan. 31, 2019. Redesignated at 85 FR 9615, Feb. 19, 2020; 88 FR 3315, Jan. 19, 2023]

**PART 3040—PRODUCT LISTS AND THE MAIL CLASSIFICATION SCHEDULE**

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