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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 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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AUTHORITY: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

SOURCE: 72 FR 63698, Nov. 9, 2007, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

Subpart A—Product Lists and the Mail Classification Schedule

SOURCE: 81 FR 38954, June 15, 2016, unless otherwise noted.

§ 3040.101 Applicability.

(a) The rules in this part require the Postal Regulatory Commission to establish and maintain lists of Postal Service products and a Mail Classification Schedule.

(b) The product lists shall categorize postal products as either market dominant or competitive. As established, the market dominant and competitive product lists shall be consistent with the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a). The market dominant and competitive product lists shall also include products identified as market tests pursuant to 39 U.S.C. 3641 and non-postal pursuant to 39 U.S.C. 404(e).

(c) The Mail Classification Schedule shall provide current price and classification information applicable to the products appearing on the market dominant and competitive product lists.

(d) Once established, the product lists and the Mail Classification Schedule may be modified subject to the procedures specified in this part.

(e) Modification of the competitive product list to add a competitive negotiated service agreement is not governed by this part but is governed by part 3041 of this chapter. The rules in part 3041 of this chapter regarding removal of a negotiated service agreement from the competitive product list

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supersede any conflicting rules in this part.

[81 FR 38954, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020, as amended at 89 FR 67294, Aug. 20, 2024]

§ 3040.102 Product lists.

(a) *Market dominant product list.* The market dominant product list shall be published in the FEDERAL REGISTER at appendix A to subpart A of part 3040—Market Dominant Product List.

(b) *Competitive product list.* The competitive product list shall be published in the FEDERAL REGISTER at appendix B to subpart A of part 3040—Competitive Product List.

[85 FR 9658, Feb. 19, 2020]

§ 3040.103 Notice of product list change.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the FEDERAL REGISTER.

(b) Notice shall be submitted to the FEDERAL REGISTER for publication within 6 months of the issue date of the applicable final order that affects the change.

(c) Modifications pending publication in the FEDERAL REGISTER are effective immediately upon written direction from the Postal Regulatory Commission.

(d) The FEDERAL REGISTER document shall:

(1) Identify modifications to the current list of market dominant products and the current list of competitive products; and

(2) Indicate how and when the previous product lists have been modified.

[81 FR 38954, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.104 Mail Classification Schedule.

(a) The Postal Regulatory Commission shall publish a Mail Classification Schedule (including both current and previous versions) on its website at <http://www.prc.gov>. Copies of the Mail Classification Schedule also shall be available during regular business hours

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for reference and public inspection at the Postal Regulatory Commission located at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

(b) The Mail Classification Schedule shall include, but shall not be limited to:

(1) Front matter, including:

(i) A cover page identifying the title of the document as the Mail Classification Schedule, the source of the document as the Postal Regulatory Commission (including Commission seal), and the publication date;

(ii) A table of contents;

(iii) A table specifying the revision history of the Mail Classification Schedule; and

(iv) A table identifying Postal Service trademarks; and

(2) Information concerning market dominant products, including:

(i) A copy of the Market Dominant Product List;

(ii) Descriptions of each market dominant product organized by the class of product, including:

(A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each market dominant product;

(B) A schedule listing the rates and fees for each market dominant product;

(C) Where applicable, the identification of a product as a special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(D) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(E) Where applicable, the identification of a product as a nonpostal product; and

(3) Information concerning competitive products, including:

(i) A copy of the competitive product list; and

(ii) Descriptions of each competitive product, including:

(A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each competitive product;

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(B) A schedule listing the current rates and fees for each competitive product of general applicability;

(C) The identification of each product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products;

(D) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(E) Where applicable, the identification of a product as a nonpostal product; and

(4) A glossary of terms and conditions; and

(5) A list of country codes for international mail prices.

[81 FR 38954, June 15, 2016. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

§3040.105 Modifications to the Mail Classification Schedule.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the Mail Classification Schedule, it shall update the Mail Classification Schedule appearing on its website at <http://www.prc.gov> in accordance with paragraph (b) of this section.

(b) Modification to the Mail Classification Schedule shall be incorporated within 3 months of the issue date of the final order.

(c) Modifications pending incorporation into the Mail Classification Schedule are effective immediately upon written direction from the Postal Regulatory Commission.

[81 FR 38954, June 15, 2016. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

APPENDIX A TO SUBPART A OF PART 3040—MARKET DOMINANT PRODUCT LIST

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

FIRST-CLASS MAIL*
Single-Piece Letters/Postcards
Presorted Letters/Postcards
Flats
Outbound Single-Piece First-Class Mail International
Inbound Letter Post
USPS MARKETING MAIL (COMMERCIAL AND NONPROFIT)*
High Density and Saturation Letters
High Density and Saturation Flats/Parcels
Carrier Route
Letters
Flats
Parcels

Every Door Direct Mail—Retail
PERIODICALS*
In-County Periodicals
Outside County Periodicals
PACKAGE SERVICES*
Alaska Bypass Service
Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail
SPECIAL SERVICES*
Ancillary Services
International Ancillary Services
Address Management Services
Caller Service
Credit Card Authentication
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Stamp Fulfillment Services
NEGOTIATED SERVICE AGREEMENTS*
Domestic*
Publisher's Clearing House Negotiated Service Agreement for USPS Marketing Mail International*
Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators
NONPOSTAL SERVICES*
Alliances with the Private Sector to Defray Cost of Key Postal Functions
Philatelic Sales
MARKET TESTS*
USPS Connect Local Mail
[89 FR 11734, Feb. 15, 2024]

APPENDIX B TO SUBPART A OF PART 3040—COMPETITIVE PRODUCT LIST

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

DOMESTIC PRODUCTS*
Priority Mail Express
Priority Mail
Parcel Select
USPS Ground Advantage
INTERNATIONAL PRODUCTS*
Outbound International Expedited Services
Inbound Parcel Post (at UPU rates)
Outbound Priority Mail International
International Priority Airmail (IPA)
International Surface Air Lift (ISAL)
International Direct Sacks-M-Bags
Outbound Single-Piece First-Class Package International Service
Inbound Letter Post Small Packets and Bulky Letters
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- Priority Mail, USPS Ground Advantage, Parcel Select & Parcel Return Service Contract 1
- Priority Mail, USPS Ground Advantage & Parcel Select Contract 1
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- Alternative Delivery Provider (ADP) Contracts
 - ADP 1
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 - ADPR 1
- Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts
- Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 4
- Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 6
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International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contracts

International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 2

International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 3

International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 4

International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 5

International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 6

International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 7

International Priority Airmail, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 8

International Priority Airmail Contracts

International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts

International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 1

International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contracts

Inbound International*

International Business Reply Service (IBRS) Competitive Contracts

International Business Reply Service Competitive Contract 1

International Business Reply Service Competitive Contract 3

Inbound Direct Entry Contracts with Customers

Inbound Direct Entry Contracts with Foreign Postal Administrations

Inbound Direct Entry Contracts with Foreign Postal Administrations

Inbound Direct Entry Contracts with Foreign Postal Administrations 1

Inbound EMS

Inbound EMS 2

Inbound Air Parcel Post (at non-UPU rates)

Inbound Competitive Multi-Service Agreements with Foreign Postal Operators

Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

SPECIAL SERVICES *

Address Enhancement Services

Greeting Cards, Gift Cards, and Stationery

International Ancillary Services

International Money Transfer Service—Outbound

International Money Transfer Service—Inbound

Premium Forwarding Service

Shipping and Mailing Supplies

Post Office Box Service

Competitive Ancillary Services

NONPOSTAL SERVICES *

Advertising

Licensing of Intellectual Property other than Officially Licensed Retail Products (OLRP)

Mail Service Promotion

Officially Licensed Retail Products (OLRP)

Passport Photo Service

Photocopying Service

Rental, Leasing, Licensing or other Non-Sale Disposition of Tangible Property

Training Facilities and Related Services

USPS Electronic Postmark (EPM) Program

MARKET TESTS *

[89 FR 11734, Feb. 15, 2024]

Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists

§ 3040.130 General.

The Postal Service, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.

[81 FR 38957, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.131 Contents of a request.

A request to modify the market dominant product list or the competitive product list shall:

- (a) Provide the name, and class if applicable, of each product that is the subject of the request;
- (b) Provide a copy of the Governor’s decision supporting the request, if any;
- (c) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or transfer a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;
- (d) Indicate whether each product that is the subject of the request is:
 - (1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;
 - (2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products; or
 - (3) A non-postal product.
- (e) Provide all supporting justification upon which the Postal Service proposes to rely; and
- (f) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.132 Supporting justification.

Supporting justification shall be in the form of a statement from one or more knowledgeable Postal Service official(s) who sponsors the request and attests to the accuracy of the information contained within the statement. The justification shall:

- (a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;
- (b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;
- (c) Explain why, as to competitive products, the addition, deletion, or

transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

- (1) Set the price of such product substantially above costs;
- (2) Raise prices significantly;
- (3) Decrease quality; or
- (4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020, as amended at 85 FR 81138, Dec. 15, 2020]

§ 3040.133 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its website. The notice shall include:

- (a) The general nature of the proceeding;
- (b) A reference to legal authority to which the proceeding is to be conducted;
- (c) A concise description of the proposals for changes in the Mail Classification Schedule;

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

(e) A specified period for public comment; and

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

[72 FR 63698, Nov. 9, 2007. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

§ 3040.134 Review.

The Commission shall review the request and responsive comments. The Commission shall either:

(a) Approve the request to modify the market dominant and competitive product lists;

(b) Institute further proceedings to consider all or part of the request if it finds that there is substantial likelihood that the modification is inconsistent with statutory policies or Commission rules, and explain its reasons for not approving the request to modify the market dominant and competitive product lists;

(c) Provide an opportunity for the Postal Service to modify its request; or

(d) Direct other action as the Commission may consider appropriate.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.135 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the concerns expressed by the Commission. Written statements commenting on the Commission's concerns shall be requested, to be filed 7 days prior to the conference. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the request;

(c) Explain the reasons for not going forward with additional proceedings and approve the request to modify the market dominant and competitive product lists; or

(d) Direct other action as the Commission may consider appropriate.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

Subpart C—Requests Initiated by Users of the Mail to Modify the Product Lists

§ 3040.150 General.

Users of the mail, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

[81 FR 38957, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.151 Contents of a request.

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(c) Indicate whether each product that is the subject of the request is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b) for competitive products; or

(3) A non-postal product.

(d) Provide all supporting justification upon which the proponent of the request proposes to rely; and

(e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.152 Supporting justification.

Supporting justification shall be in the form of a statement from a knowledgeable proponent of the request who

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attests to the accuracy of the information contained within the statement. The justification shall:

(a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly, as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020, as amended at 85 FR 81138, Dec. 15, 2020]

§ 3040.153 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its website. The notice shall include:

(a) The general nature of the proceeding;

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

(c) A concise description of the proposals for changes in the Mail Classification Schedule;

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

(e) A specified period for public comment; and

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

[72 FR 63698, Nov. 9, 2007. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

§ 3040.154 Postal Service notice and reply.

The Secretary of the Commission shall forward to the Postal Service a copy of the request. Within 28 days of the filing of the request, the Postal Service shall provide its preliminary views in regard to the request. The Postal Service may include suggestions for appropriate Commission action in response to the request.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.155 Review.

The Commission shall review the request, the Postal Service reply, and any public comment to determine whether the proposed modification to the market dominant and competitive product lists complies with applicable statutory requirements and the Commission's rules, and whether the proposed modification is consistent with the position of the Postal Service as expressed in its reply. The Commission shall either:

(a) Approve the request to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;

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- (b) Reject the request;
- (c) Institute further proceedings to consider the request to modify the market dominant and competitive product lists; or
- (d) Direct other action as the Commission may consider appropriate.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.156 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the merits of going forward with the request. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

- (a) Provide for a period of discovery to obtain further information;
- (b) Schedule a hearing on the record for further consideration of the request;
- (c) Explain the reasons for not going forward with formal proceedings; or
- (d) Direct other action as the Commission may consider appropriate.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

Subpart D—Proposal of the Commission to Modify the Product Lists

§ 3040.170 General.

The Commission, of its own initiative, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

[81 FR 38957, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.171 Contents of a proposal.

A proposal to modify the market dominant product list or the competitive product list shall:

- (a) Provide the name, and class if applicable, of each product that is the subject of the proposal;
- (b) Indicate whether the proposal would add a product to the market dominant list or the competitive list, remove a product from the market

dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(c) Indicate whether each product that is the subject of the proposal is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b) for competitive products; or

(3) A non-postal product.

(d) Provide justification supporting the proposal; and

(e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.172 Supporting justification.

Supporting justification shall:

(a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

(c) Explain why, as to competitive products, the addition, subtraction, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

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(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product involved on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Postal Service and users of the mail of the nature, scope, significance, and impact of the proposed modification.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020, as amended at 85 FR 81138, Dec. 15, 2020]

§ 3040.173 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its website. The notice shall include:

(a) The general nature of the proceeding;

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

(c) A concise description of the proposals for changes in the Mail Classification Schedule;

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

(e) A specified period for public comment; and

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

[72 FR 63698, Nov. 9, 2007. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

§ 3040.174 Postal Service notice and reply.

The Secretary of the Commission shall forward to the Postal Service a copy of the notice of proposal. Within 28 days of the filing of the proposal, the Postal Service shall provide its preliminary views in regard to the proposal. The Postal Service may include

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suggestions for appropriate further procedural steps.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.175 Review.

The Commission shall review the Postal Service reply and public comment. The Commission shall either:

(a) Approve the proposal to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;

(b) Withdraw the proposal;

(c) Institute further proceedings to consider the proposal, identifying relevant issues that may require further development; or

(d) Direct other action as the Commission may consider appropriate.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.176 Further proceedings.

If the Commission determines that further proceedings are appropriate, a conference shall be scheduled to consider the merits of going forward with the proposal. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the proposal;

(c) Explain the reasons for not going forward with formal proceedings; or

(d) Direct other action as the Commission may consider appropriate.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

Subpart E—Requests Initiated by the Postal Service To Make Material Changes or Minor Corrections to the Mail Classification Schedule

SOURCE: 80 FR 35575, June 22, 2015, unless otherwise noted.

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§ 3040.180 Material changes to product descriptions.

(a) Whenever the Postal Service proposes material changes to a product description in the Mail Classification Schedule, no later than 30 days prior to implementing the proposed changes, it shall submit to the Commission a request to change the product description in the Mail Classification Schedule.

(b) The request shall:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format; and

(2) Provide all supporting justification for the changes upon which the Postal Service proposes to rely.

[80 FR 35575, June 22, 2015. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.181 Supporting justification for material changes to product descriptions.

(a) Supporting justification for changes to a product description in the Mail Classification Schedule shall include a description of, and rationale for, the proposed changes to the product description; and the additional material in paragraphs (b) and (c) of this section.

(b)(1) As to market dominant products, explain why the changes are not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders; or

(2) As to competitive products, explain why the changes will not result in the violation of any of the standards of 39 U.S.C. 3633 and part 3035 of this chapter.

(c) Describe the likely impact that the changes will have on users of the product and on competitors.

[80 FR 35575, June 22, 2015. Redesignated and amended at 85 FR 9615, 9658, Feb. 19, 2020; 85 FR 81138, Dec. 15, 2020]

§ 3040.182 Docket and notice of material changes to product descriptions.

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.

(b) Establish a docket for each request to change a product description in the Mail Classification Schedule;

(c) Publish notice of the request on its website;

(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and

(e) Provide interested persons with an opportunity to comment on whether the proposed changes are consistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders.

[80 FR 35575, June 22, 2015. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020; 85 FR 81138, Dec. 15, 2020]

§ 3040.183 Commission review of material changes to product descriptions.

(a) The Commission shall review the request and any comments filed. The Commission shall take one of the actions identified in paragraphs (b) through (g) of this section.

(b) Approve the proposed changes, subject to editorial corrections, and change the Mail Classification Schedule to coincide with the effective date of the proposed change;

(c) Reject the proposed changes;

(d) Provide the Postal Service with an opportunity to amend the proposed changes;

(e) Direct the Postal Service to make an appropriate filing under a different section;

(f) Institute further proceedings; or

(g) Direct other action that the Commission considers appropriate.

[80 FR 35575, June 22, 2015. Redesignated at 85 FR 9615, Feb. 19, 2020]

§§ 3040.184–3040.189 [Reserved]

§ 3040.190 Minor corrections to product descriptions.

(a) The Postal Service shall ensure that product descriptions in the Mail Classification Schedule accurately represent the current offerings of the Postal Service.

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(b) The Postal Service shall submit minor corrections to product descriptions in the Mail Classification Schedule by filing notice with the Commission no later than 15 days prior to the effective date of the proposed corrections.

(c) The notice shall:

(1) Explain why the proposed corrections do not constitute material changes to the product description for purposes of § 3040.180;

(2) Explain why the proposed corrections are consistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders; and

(3) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed corrections therein in legislative format.

[80 FR 35575, June 22, 2015. Redesignated and amended at 85 FR 9615, 9659, Feb. 19, 2020; 85 FR 81138, Dec. 15, 2020]

§ 3040.191 Docket and notice of minor corrections to product descriptions.

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.

(b) Establish a docket for each proposal to correct a product description in the Mail Classification Schedule;

(c) Publish notice of the proposal on its website;

(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and

(e) Provide interested persons with an opportunity to comment on whether the proposed corrections are consistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders.

[80 FR 35575, June 22, 2015. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020; 85 FR 81138, Dec. 15, 2020]

§ 3040.192 Commission review of minor corrections to product descriptions.

(a) The Commission shall review the notice and any comments filed. The Commission shall take one of the ac-

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tions identified in paragraphs (b) through (g) of this section.

(b) Approve the proposed corrections, subject to editorial corrections, and change the Mail Classification Schedule to coincide with the effective date of the proposed change;

(c) Reject the proposed corrections;

(d) Provide the Postal Service with an opportunity to amend the proposed corrections;

(e) Direct the Postal Service to make an appropriate filing under a different section;

(f) Institute further proceedings; or

(g) Direct other action that the Commission considers appropriate.

[80 FR 35575, June 22, 2015. Redesignated at 85 FR 9615, Feb. 19, 2020]

Subpart F—Size and Weight Limitations for Mail Matter

§ 3040.210 General.

Applicable size and weight limitations for mail matter shall appear in the Mail Classification Schedule as part of the description of each product.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.211 Limitations applicable to market dominant mail matter.

(a) The Postal Service shall inform the Commission of updates to size and weight limitations for market dominant mail matter by filing notice with the Commission 45 days prior to the effective date of the proposed update. The notice shall:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed updates therein in legislative format;

(2) Describe the likely impact that the proposed update will have on users of the product(s) and on competitors; and

(3) Describe how the proposed update is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.

(b) The Commission shall provide notice of the proposed update in the FEDERAL REGISTER and seek public comment on whether the proposed update is in accordance with the policies and

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the applicable criteria of chapter 36 of title 39 of the United States Code.

(c) If the Commission finds the proposed update in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C., the Commission shall review the proposed Mail Classification Schedule language for formatting and conformance with the structure of the Mail Classification Schedule, and subject to editorial changes, shall change the Mail Classification Schedule to coincide with the effective date of the proposed update.

(d) If the Commission finds the proposed update not in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the Commission may direct other action as deemed appropriate.

[72 FR 63698, Nov. 9, 2007, as amended at 84 FR 32317, July 8, 2019. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.212 Limitations applicable to competitive mail matter.

The Postal Service shall notify the Commission of updates to size and weight limitations for competitive mail matter pursuant to subpart E of this part.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

Subpart G—Requests for Market Dominant Negotiated Service Agreements

SOURCE: 85 FR 81138, Dec. 15, 2020, unless otherwise noted.

§ 3040.220 General.

This subpart imposes additional requirements whenever there is a request to add a negotiated service agreement to the market dominant product list. The additional supporting justification appearing in § 3040.221 also should be provided whenever the Postal Service proposes to modify the terms of an existing market dominant negotiated service agreement. Commission findings that the addition of a special classification is not inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review. No rate(s) shall take effect until 45 days after the Post-

al Service files a request for review of a notice of a new rate or rate(s) adjustment specifying the rate(s) and the effective date.

§ 3040.221 Additional supporting justification for negotiated service agreements.

(a) Each request shall also include the items specified in paragraphs (b) through (j) of this section.

(b) A copy of the negotiated service agreement.

(c) The planned effective date(s) of 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 (39 U.S.C. 3622(c)(10)(A)(i) and (ii)). The projection of the change in net financial position as a result of the agreement shall be based on accepted analytical principles. The projection of the 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

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(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 (39 U.S.C. 3622(c)(10)(B)).

(i) A discussion in regard to how functionally similar negotiated service agreements will be made available on public and reasonable terms to similarly situated mailers.

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

§ 3040.222 Data collection plan and report for negotiated service agreements.

(a) The Postal Service shall include with any request concerning a negotiated service 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 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.

PART 3041—COMPETITIVE NEGOTIATED SERVICE AGREEMENTS

Subpart A—General

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- 3041.105 General.
- 3041.110 Definitions.

Subpart B—Advance Review

- 3041.205 Advance review of non-published rates products and standardized distinct products.

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- 3041.305 Applicability.
- 3041.310 General procedures and filing requirements.
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