

receive official time to the FSLMRS and the bargaining agreements between the agency and relevant labor organization.

\* \* \* \* \*

[FR Doc. 2019-26545 Filed 12-10-19; 8:45 am]

BILLING CODE P

## POSTAL REGULATORY COMMISSION

### 39 CFR Parts 3010, 3020, 3050, and 3055

[Docket No. RM2017-3; Order No. 5337]

#### System for Regulating Market Dominant Rates and Classifications

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission proposes revised rules modifying the system for regulating rates and classes for market dominant products. The revised rules incorporate feedback from comments received from the Commission's prior proposed rulemaking. The rule revisions replace some rules in their entirety, move others, and change existing rules as necessary.

**DATES:** *Comments are due:* February 3, 2020; *Reply Comments are due:* March 4, 2020.

**ADDRESSES:** For additional information, Order No. 5337 can be accessed electronically through the Commission's website at <https://www.prc.gov>. Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

#### SUPPLEMENTARY INFORMATION:

##### Table of Contents

- I. Relevant Statutory Requirements
- II. Background
- III. Basis and Purpose of Revised Proposed Rules
- IV. Revised Proposed Rules

#### I. Relevant Statutory Requirements

Section 3622 of title 39 of the United States Code established a system to regulate the rates and classes of Market Dominant Postal products. The Commission is required to conduct a review of the Market Dominant ratemaking system 10 years after the enactment of the Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3198 (2006). 39

U.S.C. 3622(d)(3). The Commission's purpose in the review is to determine whether the system is achieving the objectives appearing in subsection (b) of section 3622, taking into account the factors appearing in subsection (c) of 3622. If, upon completion of the mandatory 10-year review, including an opportunity for notice and public comment, the Commission determines that the system is not achieving the objectives (taking into account the factors), the Commission may "by regulation, make such modification or adopt such alternative system for regulating rates and classes for market-dominant products as necessary to achieve the objectives." 39 U.S.C. 3622(d)(3).

#### II. Background

Pursuant to the directives in section 3622 of the PAEA, the Commission initiated Docket No. RM2017-3 to conduct a comprehensive analysis of whether the PAEA system achieved the nine objectives, taking into account the factors, in the decade following the PAEA's enactment. The Commission issued Order No. 4257 setting forth the findings from its review.<sup>1</sup> In Order No. 4257, the Commission determined that the overall PAEA system "has not achieved the objectives taking into account the factors of the PAEA." Order No. 4257 at 4, 275.

In response to its conclusions in Order No. 4257 and as contemplated by section 3622(d)(3), the Commission issued a Notice of Proposed Rulemaking (NPR)<sup>2</sup> preceded by an Advance Notice of Proposed Rulemaking.<sup>3</sup> In the NPR, the Commission proposed to amend several parts of title 39 of the Code of Federal Regulations to achieve the objectives of 39 U.S.C. 3622(b). Order No. 4258 at 3. The NPR sought public comment on the Commission's proposed amendments. In response to the wide range of comments received and additional considerations, the Commission proposes new changes to the regulations and modifies and clarifies previous proposals.

#### III. Basis and Purpose of Revised Proposed Rules

In Order No. 4257, the Commission concluded that "while some aspects of

the system of regulating rates and classes for market dominant products have worked as planned, overall, the system has not achieved the objectives of the PAEA." Order No. 4257 at 5. The Commission analyzed the system by reviewing three topical areas that encompassed the nine objectives of the PAEA: (1) The structure of the ratemaking system; (2) the financial health of the Postal Service; and (3) service. *Id.* at 22. In its review of the structure of the ratemaking system, the Commission found that with respect to pricing, the system did not result in increased pricing efficiency. *Id.* at 48. It concluded that the system did not result in pricing efficiency because "workshare discounts were not set as close as practicable to their avoided costs despite the Postal Service's ability to do so under the price cap" in conjunction with the fact that "seven products did not cover their attributable costs during the PAEA era." *Id.* at 145.

In its analysis of the financial health of the Postal Service, the Commission determined that "financial stability, including retained earnings, has not been maintained for the Postal Service in the medium and long-term time frames and that cost reductions and operational efficiency gains have not been maximized." *Id.* at 148. The Commission further noted that the aggressive Retiree Health Benefits Fund prefunding and reductions in volume and revenue added to the Postal Service's net losses, as did the impact of the Great Recession combined with emergent technological trends resulting in even greater declining volumes for First-Class Single-Piece Mail. *Id.* at 38-40. Finally, in its review of service, the Commission determined that the system did not effectively encourage the maintenance of high quality service standards. *Id.* at 4-5, 250.

Subsequently, the Commission issued the NPR setting forth proposed rules to address the shortcomings of the system of ratemaking based on the conclusions in Order No. 4257. With respect to the finding that the system did not achieve pricing efficiency, the Commission proposed rules to modify the requirements related to workshare discounts. The proposed rules phased out two practices that harm pricing efficiency: "workshare discounts set substantially below avoided costs and workshare discounts set substantially above avoided costs." Order No. 4258 at 93.

To address the findings related to the system's failure to provide for the financial health of the Postal Service, the Commission made three proposals intended to address the failure to attain

<sup>1</sup> Order on the Findings and Determination of the 39 U.S.C. 3622 Review, December 1, 2017 (Order No. 4257).

<sup>2</sup> Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017 (Order No. 4258).

<sup>3</sup> Advance Notice of Proposed Rulemaking on the Statutory Review of the System for Regulating Rates and Classes for Market Dominant Products, December 20, 2016 (Order No. 3673).

medium-term and long-term financial stability. *Id.* at 26. First, the Commission proposed a mechanism to provide the Postal Service with an additional 2 percentage points of rate authority per calendar year for 5 years following the effective date of the regulations. *Id.* This amount was aimed at putting the Postal Service “on the path to medium-term financial stability by providing [it] the opportunity to generate additional revenue to cover its obligations.” *Id.* at 38. Second, the Commission proposed a performance-based rate authority mechanism to provide up to an additional 1 percentage point of rate authority per calendar year to address the failure to maintain financial stability in the long term. *Id.* at 39. This proposal was dependent on the Postal Service achieving specific performance-based requirements for operational efficiency and service standard quality and was aimed at putting the “Postal Service on the path to long-term financial stability by providing the Postal Service the opportunity to generate retained earnings.” *Id.* at 38–39. The proposed amount of performance-based rate authority was based on “several reference points related to capital investment, capital assets, and borrowing authority.” *Id.* at 39. In addition to placing the Postal Service on the path to long-term financial stability, the proposal was aimed at remedying the deficiencies of the system with respect to the failure to maximize incentives to reduce costs and increase efficiency and maintain high quality service standards. *Id.* at 46. Third, the Commission proposed a mechanism to improve the cost coverage of non-compensatory classes and products by including rate design requirements for non-compensatory products and authorizing an additional 2 percentage points of rate authority per calendar year for non-compensatory classes of mail. *Id.* at 77. The proposal was based on the Commission’s finding that non-compensatory classes and products threatened the financial integrity of the Postal Service because the revenues from these products and classes do not cover their attributable costs. *Id.* at 73; Order No. 4257 at 233–235. The proposal was aimed at placing the “Postal Service on the path to having fully compensatory products and classes.” Order No. 4258 at 73–74.

Finally, the NPR proposed additional procedural improvements intended to “improve the ratemaking process relating to planned rate adjustments of general applicability.” *Id.* at 98. These proposals were “within the scope of the Commission’s general authority to

revise its regulations” and were in line with the Commission’s review in Order No. 4257 and comments received. *Id.* The proposed changes related to the schedule for regular and predictable rate adjustments and the timing for the notice period and related filings for rate adjustments. *Id.* at 98–99.

After further consideration, including consideration of the comments received in response to the NPR, the Commission provides revisions to its proposed rules in its Revised NPR.<sup>4</sup>

First, the Commission modifies the proposed supplemental rate authority mechanism to address specific drivers of the Postal Service’s inability to achieve net income during the PAEA era. Order No. 5337 at 12. Instead of a singular, fixed amount of supplemental rate authority, the revised supplemental authority proposal includes two separate mechanisms intended to provide rate authority to address costs largely outside the Postal Service’s control. *Id.* The first mechanism provides additional rate authority based on loss of density, and the second mechanism provides additional rate authority based on amortization of retirement benefit obligations until such time as the Postal Service has sufficient revenue incorporated in the rate base to cover these payments. *Id.* at 12–13.

Second, the Commission adjusts the performance-based authority to retain the 1 percentage point of rate authority benchmark but modifies how the specific performance-based requirements for operational efficiency and service will be measured. *Id.* at 13–14. Additionally, the Postal Service must now meet both efficiency and service benchmarks to claim the performance-based rate authority. These revisions to the performance-based authority are intended to allow the Postal Service to improve its financial health and provide a mechanism for the Postal Service to achieve long-term financial stability and increase operational efficiency while maintaining high quality service standards. *Id.* at 14.

Next, the Commission makes minor revisions to the rules for non-compensatory products and classes, proposing that the use of an additional 2 percentage points of rate authority for non-compensatory classes be optional and removing the requirement that determinations of a class’s compensatory status be made only in the Annual Compliance Determination proceeding. *Id.* These modifications are geared towards placing the Postal

Service on the path to having fully compensatory products and classes as well as improving the financial integrity of the system while allowing for the continued achievement of objectives relating to pricing flexibility, pricing efficiency, and establishing and maintaining reasonable rates. *Id.*

The Commission further proposes revised rules for worksharing discounts that dispense with the use of the 3-year grace period. *Id.* The proposed rules prohibit the Postal Service from: (1) Changing those workshare discounts currently set equal to avoided cost; (2) reducing workshare discounts set below avoided cost; and (3) increasing workshare discounts set above avoided cost. *Id.* The modifications also add a new requirement that the Postal Service provide information and analysis specific to certain workshare costs set excessively above or below avoided cost. *Id.* The proposed workshare rules are intended to incentivize workshare discounts to adhere as closely as possible to Efficient Component Pricing principles in order to help the ratemaking system maximize incentives to increase efficiency. *Id.* at 14–15.

The Commission also proposes new reporting requirements for costs and cost-reduction initiatives in response to commenter concerns and in light of the revised proposals for additional rate authority. *Id.* at 15. The proposals set forth reporting requirements for changes in unit costs, specific cost-reduction initiatives, and Decision Analysis Reports. *Id.* The new cost reporting requirements are intended to provide transparency into the Postal Service’s efforts to reduce costs and increase efficiency. *Id.*

Finally, the Commission proposes additional procedural rules related to planning rate adjustments of general applicability. *Id.* These revisions are intended to improve the ratemaking process. *Id.*

#### IV. Revised Proposed Rules

Proposed 39 CFR part 3010, subpart A describes the applicability of the rules, provides an index, sets forth relevant definitions, and modifies the schedule for regular and predictable rate adjustments.

Proposed 39 CFR part 3010, subpart B modifies procedures applicable to periodic rate adjustments (including extending notice and filing periods from 45 to 90 days), setting forth specific requirements for contents of a rate adjustment filing (including mandating that the Postal Service certify that it has used the most recently accepted analytical principles in its rate adjustment filing), specifying content to

<sup>4</sup> Revised Notice of Proposed Rulemaking, December 5, 2019 (Order No. 5337).

be included in supporting technical documentation, and describing the sequence of a proceeding applicable to a request to review a notice of rate adjustment. This section also specifies the calculation of the maximum rate adjustment authority and imposes limitations on certain rate decreases, providing an exception for certain *de minimis* rate increases.

Proposed 39 CFR part 3010, subpart C relates to the timing of rate adjustment authority dependent on CPI-U.

Proposed 39 CFR part 3010, subpart D creates additional rate authority to address the effects of decreases in mail density and sets forth the data sources and calculation of the density rate authority.

Proposed 39 CFR part 3010, subpart E creates additional rate authority to provide the Postal Service with revenue for remittance towards the statutorily mandated Retirement Health Benefits Fund, Civil Service Retirement System, and Federal Employees Retirement System unfunded liabilities. This section provides definitions, procedures applicable to claiming the additional rate authority, and the data sources, calculation, and requirement that the Postal Service remit the amount of revenue collected under this authority towards the supplemental and unfunded liabilities.

Proposed 39 CFR part 3010, subpart F creates an additional 1 percentage point of rate authority per class of mail based upon the Postal Service meeting or exceeding an operational efficiency-based requirement and adhering to a service standard-based requirement. This section sets forth the timing for the Postal Service to claim the additional rate authority and describes the criteria for claiming both the operational efficiency-based requirement and the service standard-based requirement.

Proposed 39 CFR part 3010, subpart G describes new rate-setting criteria applicable to non-compensatory classes and products.

Proposed 39 CFR part 3010, subpart H relates to the manner by which the Postal Service is required to calculate unused rate adjustment authority and, if applicable, revise the schedule of banked rate adjustment authority whenever it plans to adjust rates.

Proposed 39 CFR 3010, subpart I incorporates the requirements concerning exigent rate increases. These updates are not intended to change the meaning or operation of the current rules, but the current rules have been reorganized.

Proposed 39 CFR 3010, subpart J establishes rate design criteria for workshare discounts, including setting

forth new limited instances in which the Postal Service may set workshare discounts below avoided costs.

To create global consistency between 39 CFR parts 3010 and 3020, conforming changes are proposed to §§ 3020.32, 3020.52, 3020.72, 3020.81, 3020.82, 3020.90, 3020.91, and 39 CFR 3020, subpart G.

Additional conforming changes are proposed in 39 CFR part 3050 for §§ 3050.20, 3050.21, 3050.55, and 3050.60. Conforming changes are also proposed in 39 CFR part 3055 for § 3055.2.

## List of Subjects

### 39 CFR Part 3010

Administrative practice and procedure, Postal Service.

### 39 CFR Part 3020

Administrative practice and procedure.

### 39 CFR Part 3050

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

### 39 CFR Part 3055

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend Chapter III of title 39 of the Code of Federal Regulations as follows:

- 1. Revise part 3010 to read as follows:

## PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

### Subpart A—General Provisions

Sec.

3010.100 Applicability.

3010.101 Definitions.

3010.102 Schedule for regular and predictable rate adjustments.

### Subpart B—Rate Adjustments

3010.120 General.

3010.121 Postal Service rate adjustment filing.

3010.122 Contents of a rate adjustment filing.

3010.123 Supporting technical documentation.

3010.124 Docket and notice.

3010.125 Opportunity for comments.

3010.126 Proceedings.

3010.127 Maximum rate adjustment authority.

3010.128 Calculation of percentage change in rates.

3010.129 Exceptions for *de minimis* rate increases.

### Subpart C—Consumer Price Index Rate Authority

3010.140 Applicability.

3010.141 CPI-U data source.

3010.142 CPI-U rate authority when rate adjustment filings are 12 or more months apart.

3010.143 CPI-U rate authority when rate adjustment filings are less than 12 months apart.

### Subpart D—Density Rate Authority

3010.160 Applicability.

3010.161 Density calculation data sources.

3010.162 Calculation of density rate authority.

### Subpart E—Retirement Obligation Rate Authority

3010.180 Definitions.

3010.181 Applicability.

3010.182 Retirement obligation data sources.

3010.183 Calculation of retirement obligation rate authority.

3010.184 Required minimum remittances.

3010.185 Forfeiture.

### Subpart F—Performance-Based Rate Authority

3010.200 Applicability.

3010.201 Operational efficiency-based requirement.

3010.202 Service quality-based requirement.

### Subpart G—Non-Compensatory Classes or Products

3010.220 Applicability.

3010.221 Individual product requirement.

3010.222 Class requirement and additional class rate authority.

### Subpart H—Accumulation of Unused and Disbursement of Banked Rate Adjustment Authority

3010.240 General.

3010.241 Schedule of banked rate adjustment authority.

3010.242 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed 12 months apart or less.

3010.243 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed more than 12 months apart.

3010.244 Calculation of unused rate adjustment authority for rate adjustments that only include rate decreases.

3010.245 Application of banked rate authority.

### Subpart I—Rate Adjustments Due to Extraordinary and Exceptional Circumstances

3010.260 General.

3010.261 Contents of a rate adjustment filing.

3010.262 Supplemental information.

3010.263 Docket and notice.

3010.264 Public hearing.

3010.265 Opportunity for comments.

3010.266 Deadline for Commission decision.

3010.267 Treatment of banked rate adjustment authority.

### Subpart J—Workshare Discounts

3010.280 Applicability.

- 3010.281 Calculation of passthroughs for workshare discounts.
- 3010.282 Increased pricing efficiency.
- 3010.283 Limitations on excessive discounts.
- 3010.284 Limitations on discounts below avoided cost.
- 3010.285 Proposal to adjust a rate associated with a workshare discount.
- 3010.286 Application for waiver.

Authority: 39 U.S.C. 503; 3622.

## Subpart A—General Provisions.

### § 3010.100 Applicability.

(a) The rules in this part implement provisions in 39 U.S.C. chapter 36, subchapter I, establishing the modern system of ratemaking for regulating rates and classes for market dominant products. These rules are applicable whenever the Postal Service proposes to adjust a rate of general applicability for any market dominant product, which includes the addition of a new rate, the removal of an existing rate, or a change to an existing rate. Current rates may be found in the Mail Classification Schedule appearing on the Commission's website at [www.prc.gov](http://www.prc.gov).

(b) Rates may be adjusted either subject to the rules appearing in subpart B of this part, which includes a limitation on rate increases, or subject to the rules appearing in subpart I of this part, which does not include a limitation on rate increases but requires either extraordinary or exceptional circumstances. The rules applicable to the calculation of the limitations on rate increases appear in subparts C through H of this part. The rules for workshare discounts, which are applicable whenever market dominant rates are adjusted, appear in subpart J of this part.

### § 3010.101 Definitions.

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

(b) "Annual limitation" means the annual limitation on the percentage change in rates equal to the change in the Consumer Price Index for all Urban Consumers (CPI-U) unadjusted for seasonal variation over the most recently available 12-month period preceding the date the Postal Service files a request to review its notice of rate adjustment, as determined by the Commission.

(c) "Banked rate authority" means unused rate adjustment authority accumulated for future use pursuant to these rules.

(d) A "class" of mail means the First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, or Special Services groupings of market dominant Postal Service products or services.

Generally, the regulations in this part are applicable to individual classes of mail.

(e) "Density rate authority" means rate authority that is available to all classes to address the effects of decreases in density of mail.

(f) "Maximum rate adjustment authority" means the maximum percentage change in rates available to a class for any planned increase in rates. It is the sum of: The consumer price index rate authority, and any available density rate authority, retirement obligation rate authority, banked rate authority, performance-based rate authority, and rate authority applicable to non-compensatory classes.

(g) "Performance-based rate authority" means rate authority that is available to all classes where the Postal Service meets or exceeds operational efficiency-based requirement and adheres to service standard-based requirement as determined by the Commission.

(h) "Rate authority applicable to non-compensatory classes" means rate authority available to classes where revenue for each product within the class was insufficient to cover that product's attributable costs as determined by the Commission.

(i) "Rate cell" means each and every separate rate identified as a rate of general applicability.

(j) "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.

(k) "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.

(l) "Retirement obligation rate authority" means rate authority that is available to all classes to provide revenue for remittance towards the statutorily mandated amortization payments for unfunded liabilities.

(m) A "seasonal or temporary rate" is a rate that is in effect for a limited and defined period of time.

### § 3010.102 Schedule for regular and predictable rate adjustments.

(a) The Postal Service shall develop a Schedule for Regular and Predictable Rate Adjustments applicable to rate adjustments subject to this part. The Schedule for Regular and Predictable Rate Adjustments shall:

(1) Schedule rate adjustments at specific regular intervals of time;

(2) Provide estimated filing and implementation dates (month and year) for future rate adjustments for each class of mail expected over a minimum of the next 3 years; and

(3) Provide an explanation that will allow mailers to predict with reasonable accuracy, by class, the amounts of future scheduled rate adjustments.

(b) The Postal Service shall file a current Schedule for Regular and Predictable Rate Adjustments annually with the Commission at the time of filing the Postal Service's section 3652 report. The Commission shall post the current schedule on the Commission's website at [www.prc.gov](http://www.prc.gov).

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

(d) The Postal Service may vary the magnitude of rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide an explanation for such variation with its rate adjustment filing.

## Subpart B—Rate Adjustments

### § 3010.120 General

This subpart describes the process for the periodic adjustment of rates subject to the percentage limitations specified in § 3010.127 that are applicable to each class of mail.

### § 3010.121 Postal Service rate adjustment filing.

(a) In every instance in which the Postal Service determines to exercise its statutory authority to adjust rates for a class of mail, the Postal Service shall comply with the requirements specified in paragraphs (b) through (d) of this section.

(b) The Postal Service shall take into consideration how the planned rate adjustments are in accordance with the provisions of 39 U.S.C. chapter 36.

(c) The Postal Service shall provide public notice of its planned rate adjustments in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 90

days prior to the planned implementation date of the rate adjustments.

(d) The Postal Service shall file a request to review its notice of rate adjustment with the Commission no later than 90 days prior to the planned implementation date of the rate adjustment.

**§ 3010.122 Contents of a rate adjustment filing.**

(a) A rate adjustment filing under § 3010.121 shall include the items specified in paragraphs (b) through (j) of this section.

(b) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 90 days before the effective date(s) for the planned rate adjustments.

(c) The intended effective date(s) of the planned rate adjustments.

(d) A schedule of the planned rate adjustments, including a schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments.

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

(f) The supporting technical documentation as described in § 3010.123.

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

(h) A certification that all cost, avoided cost, volume, and revenue figures submitted with the rate adjustment filing are developed from the most recent applicable Commission accepted analytical principles.

(i) For a rate adjustment that only includes a decrease in rates, a statement of whether the Postal Service elects to generate unused rate adjustment authority.

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

**§ 3010.123 Supporting technical documentation.**

(a) Supporting technical documentation shall include the items specified in paragraphs (b) through (k) of this section, as applicable to the specific rate adjustment filing. This information must be supported by workpapers in which all calculations are shown and all relevant values (*e.g.*, rates, CPI-U values, billing determinants) are identified with

citations to original sources. The information must be submitted in machine-readable, electronic format. Spreadsheet cells must be linked to underlying data sources or calculations (not hard-coded), as appropriate.

(b) The maximum rate adjustment authority, by class, as summarized by § 3010.127 and calculated separately for each of subparts C through H of this part, as appropriate.

(c) A schedule showing the banked rate adjustment authority available, by class, and the available amount for each of the preceding 5 years calculated as required by subpart H of this part.

(d) The calculation of the percentage change in rates, by class, calculated as required by § 3010.128.

(e) The planned usage of rate adjustment authority, by class, and calculated separately for each of subparts C through H of this part, as appropriate.

(f) The amount of new unused rate adjustment authority, by class, if any, that will be generated by the rate adjustment calculated as required by subpart H of this part, as applicable.

(g) A schedule of the workshare discounts included with the planned rate adjustments, and a companion schedule listing the avoided costs that underlie each such discount.

(h) 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 workshare discount;

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

(i) Whenever the Postal Service establishes a new discount or surcharge rate it does not view as creating a workshare discount, it must include with its filing:

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

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

(j) Whenever the Postal Service includes a rate incentive with its planned rate adjustment, it must include with its filing:

(1) 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

(2) A statement of whether the Postal Service has excluded the rate incentive from the calculation of the percentage change in rates under § 3010.128.

(k) For each class or product where the attributable cost for that class or product exceeded the revenue from that class or product as determined by the Commission, a demonstration that the planned rate adjustments comply with the requirements in subpart G of this part.

**§ 3010.124 Docket and notice.**

(a) The Commission will establish a docket for each rate adjustment filed by the Postal Service under § 3010.121, promptly publish notice of the filing in the **Federal Register**, and post the filing on its website. The notice shall include the items specified in paragraphs (b) through (g) of this section.

(b) The general nature of the proceeding.

(c) A reference to legal authority under which the proceeding is to be conducted.

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

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

(f) A period of 30 days from the date of the filing for public comment.

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

**§ 3010.125 Opportunity for comments.**

Public comments should focus on whether planned rate adjustments comport with applicable statutory and regulatory requirements.

**§ 3010.126 Proceedings.**

(a) If the Commission determines that the rate adjustment filing does not substantially comply with the requirements of §§ 3010.122 and 3010.123, the Commission may:

(1) Inform the Postal Service of the deficiencies and provide an opportunity for the Postal Service to take corrective action;

(2) Toll or otherwise modify the procedural schedule until such time the Postal Service takes corrective action;

(3) Dismiss the rate adjustment filing without prejudice; or

(4) Take other action as deemed appropriate by the Commission.

(b) Within 21 days of the conclusion of the public comment period the Commission will determine whether the planned rate adjustments are consistent with applicable law and issue an order announcing its findings. Applicable law means only the applicable requirements

of this part, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629.

(c) If the planned rate adjustments are found consistent with applicable law, they may take effect.

(d) If the planned rate adjustments are found inconsistent with applicable law, the Commission will notify and require the Postal Service to respond to any issues of noncompliance.

(e) Following the Commission's notice of noncompliance, the Postal Service may submit an amended rate adjustment filing that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended rate adjustment filing shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(f) The Commission will allow a period of 10 days from the date of the amended rate adjustment filing for public comment.

(g) The Commission will review the amended rate adjustment filing together with any comments filed for compliance and issue an order announcing its findings within 21 days after the comment period ends.

(h) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect. However, no amended rate shall take effect until 45 days after the Postal Service transmits its rate adjustment filing specifying that rate.

(i) If the planned rate adjustments in an amended rate adjustment filing are found to be inconsistent with applicable law, the Commission shall explain the basis for its determination and suggest an appropriate remedy. Noncompliant rates may not go into effect.

(j) A Commission finding that a planned rate adjustment is in compliance with the applicable requirements of this part, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter I is provisional and subject to subsequent review.

#### **§ 3010.127 Maximum rate adjustment authority.**

(a) The maximum rate adjustment authority available to the Postal Service

for each class of market dominant mail is limited to the sum of the percentage points developed in:

(1) Subpart C—Consumer Price Index Rate Authority;

(2) Subpart D—Density Rate Authority;

(3) Subpart E—Retirement Obligation Rate Authority;

(4) Subpart F—Performance-based Rate Authority;

(4) Subpart G—Non-compensatory Classes or Products; and

(5) Subpart H—Accumulation of Unused and Disbursement of Banked Rate Adjustment Authority.

(b) For any product where the attributable cost for that product exceeded the revenue from that product as determined by the Commission, rates may not be reduced.

#### **§ 3010.128 Calculation of percentage change in rates.**

(a) For the purpose of calculating the percentage change in rates, the current rate is the rate in effect at the time of the rate adjustment filing under § 3010.121 with the following exceptions.

(1) 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. When used with respect to a seasonal or temporary rate, the current rate is the most recent rate in effect for the rate cell, regardless of whether the seasonal or temporary rate is available at the time of the rate adjustment filing.

(2) 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, the current rate is the full undiscounted rate in effect for the rate cell at the time of the rate adjustment filing, not the discounted rate in effect for the rate cell at such time.

(b) For the purpose of calculating the percentage change in rates, the volume for each rate cell shall be obtained from the most recently available 12 months of Postal Service billing determinants with the following permissible adjustments.

(1) 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.

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

(3) 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 0. If the Postal Service does not adjust the billing determinants for the rate cell to 0, the Postal Service shall include a rationale for its treatment of the rate cell with the information required under paragraph (b)(1) of this section.

(c) For a rate adjustment that involves a rate increase, 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. Second, the same set of rate cell volumes is multiplied by the corresponding current rate for each cell and the resulting products are summed. Third, 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.

(d) For rate adjustments that only involve a rate decrease, 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 rate adjustment filing that involved a rate increase to replace the planned rates under the most recent rate adjustment filing that involves a rate increase with the corresponding planned rates applicable to the class from the rate adjustment filing involving only a rate decrease.

(e) The formula for calculating the percentage change in rates for a class, described in paragraphs (c) and (d) of this section, is as follows:

Percentage change in rates =

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

Where,

N = number of rate cells in the class

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

Ri,n = planned rate of rate cell i

Ri,c = current rate of rate cell i (for rate adjustment involving a rate increase) or rate from most recent rate adjustment involving a rate increase for rate cell i (for a rate adjustment only involving a rate decrease)

Vi = volume of rate cell i

(f) 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 § 3010.128(g)).

(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.

(g) Treatment of volume associated with negotiated service agreements and rate incentives that are not rates of general applicability.

(1) 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 the percentage change in rates under this section 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 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 the percentage change in rates.

(2) 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.

#### **§ 3010.129 Exceptions for de minimis rate increases.**

(a) The Postal Service may request that the Commission review a de minimis rate increase without immediately calculating the maximum rate adjustment authority or banking unused rate adjustment authority. For this exception to apply, requests to review de minimis rate adjustments must be filed separately from any other request to review a rate adjustment filing.

(b) Rate adjustments resulting in rate increases are de minimis if:

(1) For each affected class, the rate increases 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 rate adjustment resulting in a rate increase, or the most recent rate adjustment due to extraordinary and exceptional circumstances, 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.

(c) If the rate adjustments are de minimis, no unused rate adjustment authority will be added to the schedule of banked rate adjustment authority maintained under subpart G of this part as a result of the de minimis rate increase.

(d) If the rate adjustments are de minimis, no rate decreases may be taken into account when determining whether rate increases comply with paragraphs (b)(1) and (2) of this section.

(e) In the next rate adjustment filing proposing to increase rates for a class that is not a de minimis rate increase:

(1) The maximum rate adjustment authority 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.

(f) The Postal Service shall file supporting workpapers with each request to review a de minimis rate increase that demonstrate that the sum of all rate increases included in de minimis rate increases since the most recent rate adjustment resulting in a rate increase that was not de minimis, or the most recent rate adjustment due to extraordinary and exceptional circumstances, does not result in a percentage change in rates for the class equaling or exceeding 0.001 percent.

(g) For any product where the attributable cost for that product exceeded the revenue from that product

as determined by the Commission, rates may not be reduced.

#### **Subpart C—Consumer Price Index Rate Authority**

##### **§ 3010.140 Applicability.**

The Postal Service may adjust rates based upon changes in the Consumer Price Index for all Urban Consumers (CPI-U) identified in § 3010.141. If rate adjustment filings involving rate increases are filed 12 or more months apart, rate adjustments are subject to a full year limitation calculated pursuant to § 3010.142. If rate adjustment filings involving rate increases are filed less than 12 months apart, rate adjustments are subject to a partial year limitation calculated pursuant to § 3010.143.

##### **§ 3010.141 CPI-U data source.**

The monthly CPI-U values needed for the calculation of rate adjustment limitations 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.”

##### **§ 3010.142 CPI-U rate authority when rate adjustment filings are 12 or more months apart.**

(a) If a rate adjustment filing involving a rate increase is filed 12 or more months after the most recent rate adjustment filing involving a rate increase, then the calculation of an annual limitation for the class (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 of the rate adjustment filing and dividing the sum by 12 (Recent Average). Second, 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). Third, 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.

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



**§ 3010.143 CPI-U rate authority when rate adjustment filings are less than 12 months apart.**

(a) If a rate adjustment filing involving a rate increase is filed less than 12 months after the most recent rate adjustment filing involving a rate increase, then the annual limitation for the class (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.

(b) 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 of the rate adjustment filing and dividing the sum by 12 (Recent Average). Second, the partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous rate adjustment filing (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.

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

**Subpart D—Density Rate Authority**

**§ 3010.160 Applicability.**

(a) This subpart allocates rate authority to address the effects of decreases in the density of mail as measured by the sources identified in § 3010.161. The calculation of the additional rate authority corresponding to the change in density is described in § 3010.162.

(b) The Postal Service shall file a notice with the Commission by December 31 of each year that calculates the amount of density rate authority that is eligible to be authorized under this subpart.

(c) The Commission shall review the Postal Service's notice and determine how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission's determination;

(2) Must be included in the calculation of the maximum rate adjustment authority in the first generally applicable rate adjustment filed after the Commission's determination;

(3) Shall lapse if unused, within 12 months of the Commission's determination; and

(4) May not be used to generate unused rate authority, nor shall it affect existing banked rate authority.

**§ 3010.161 Density calculation data sources.**

(a) The data needed for the calculation of the density rate authority in § 3010.162 shall be obtained from the values reported by the Postal Service as specified in paragraphs (b) through (d) of this section. When both originally filed and annually revised data are available, the originally filed data shall be used. When the originally filed data are corrected through a refile or in the Commission's Annual Compliance Determination report, the corrected version of the originally filed data shall be used.

(b) Market dominant volume and total volume from the Revenue, Pieces, and Weight report, filed by the Postal Service under § 3050.25 of this chapter;

(c) Institutional costs and total costs from the Cost and Revenue Analysis report, filed with the Postal Service's section 3652 report; and

(d) The number of delivery points, from the input data used to produce the Total Factor Productivity estimates, filed with the Postal Service's section 3652 report.

**§ 3010.162 Calculation of density rate authority.**

(a) *Formulas*—(1) The formula for calculating the amount of density rate authority, in conformance with paragraph (c)(1) of this section, is as follows:

Density rate authority = the greater of 0 and

$$-1 * \frac{IC_T}{TC_T} * \% \Delta D_{[T-1,T]}$$

Where,

T = most recently completed fiscal year

T-1 = fiscal year prior to fiscal year T

IC<sub>T</sub> = institutional cost in fiscal year T

TC<sub>T</sub> = total cost in fiscal year T

$\% \Delta D_{[T-1,T]}$  = Percentage change in density from fiscal year T-1 to fiscal year T

(2) The formula for calculating the percentage change in density, in

conformance with paragraph (b)(2) of this section, is as follows:

Percentage change in density from prior fiscal year =

$$\frac{\frac{V_T}{DP_T}}{\frac{V_{T-1}}{DP_{T-1}}} - 1$$

Where,

T = most recently completed fiscal year

T-1 = fiscal year prior to fiscal year T

V<sub>T</sub> = volume in fiscal year T (either market dominant volume or total volume as discussed in paragraph (b)(2) of this section)

DP<sub>T</sub> = delivery points in fiscal year T

(b) *Calculation*—(1) The amount of density rate authority available under

this section shall be calculated in three steps. First, the percentage change in density during the most recently completed fiscal year shall be calculated using the formula in paragraph (a)(2) of this section as described in paragraph (b)(2) of this section. Second, this percentage change shall be multiplied by the institutional cost ratio, which is

calculated as institutional costs for the most recently completed fiscal year divided by total costs for that fiscal year. Finally, this product shall be multiplied by negative 1 so that declines in density correspond to a positive increase in rates. If the result of this calculation is less than 0, the amount of additional rate authority shall be 0.



(2) The percentage change in density from the prior fiscal year shall be calculated as the ratio of volume to delivery points for the most recently completed fiscal year, divided by the same ratio for the prior fiscal year, and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places. To ensure that decreases in competitive product volume will not result in the Postal Service receiving greater additional rate adjustment authority under this subpart, the percentage change in density shall be calculated two ways: Using market dominant volume and using total volume. The greater of the two results (not using absolute value) shall be used as the percentage change in density from the prior fiscal year.

### Subpart E—Retirement Obligation Rate Authority

#### § 3010.180 Definitions.

(a) The definitions in paragraphs (b) through (e) of this section apply to this subpart.

(b) “Amortization payments” mean the amounts that the Postal Service is invoiced by the U.S. Office of Personnel Management to provide for the liquidation of the specific and supplemental unfunded liabilities by statutorily predetermined dates, as described in § 3010.182(a).

(c) “Phase-in period” means the period of time spanning the fiscal years of issuance of the first five determinations following the effective date of this subpart, as specified by the timing provisions in § 3010.181.

(d) “Required minimum remittance” means the minimum amount the Postal Service is required to remit during a particular fiscal year, as calculated under § 3010.184.

(e) “Revenue collected under this subpart” means the amount of revenue collected during a fiscal year as a result of all previous rate increases authorized under this subpart, as calculated under § 3010.184.

#### § 3010.181 Applicability.

(a) This subpart allocates additional rate authority to provide the Postal Service with revenue for remittance towards the statutorily mandated amortization payments for supplemental and unfunded liabilities identified in § 3010.182. As described in § 3010.184, for retirement obligation rate authority to be made available, the Postal Service must annually remit towards these amortization payments all revenue collected under this subpart previously. The full retirement obligation rate

authority, calculated as described in § 3010.183, shall be phased in over 5 fiscal years, taking into account changes in volume during the phase-in period. If combined with an equal rate increase on Competitive products, the compounded rate increase resulting from retirement obligation rate authority is calculated to generate sufficient additional revenue at the end of the phase-in period to permit the Postal Service to remit the entire invoiced amount of its amortization payments.

(b) The Postal Service shall file a notice with the Commission by December 31 of each year, until the conclusion of the phase-in period, that calculates the amount of retirement obligation rate authority that is eligible to be authorized under this subpart.

(c) The Commission shall review the Postal Service’s notice and determine how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission’s determination;

(2) Must be included in the calculation of the maximum rate adjustment authority in the first generally applicable rate adjustment filed after the Commission’s determination;

(3) Shall lapse if not used in the first generally applicable rate adjustment filed after the Commission’s determination;

(4) Shall lapse if unused, within 12 months of the Commission’s determination; and

(5) May not be used to generate unused rate authority, nor shall it affect existing banked rate authority.

#### § 3010.182 Retirement obligation data sources.

(a) The amounts of the amortization payments needed for the calculation of retirement obligation rate adjustment authority in § 3010.183 shall be obtained from notifications to the Postal Service by the Office of Personnel Management of annual determinations of the funding amounts specific to payments at the end of each fiscal year for Retiree Health Benefits as computed under 5 U.S.C. 8909a(d)(2)(B) and (d)(3)(B)(ii); the Civil Service Retirement System as computed under 5 U.S.C. 8348(h)(2)(B); and the Federal Employees Retirement System as computed under 5 U.S.C. 8423(b)(1)(B), (b)(2) and (b)(3)(B), filed with the Postal Service’s section 3652 report.

(b) The values for market dominant revenue, total revenue and market dominant volumes needed for the calculation of retirement obligation rate

authority in § 3010.183 shall be obtained from values reported in the Revenue, Pieces, and Weight report, filed by the Postal Service under § 3050.25 of this chapter.

(c) The values for additional rate authority previously provided under this subpart, if any, needed for the calculation of retirement obligation rate authority in § 3010.182 and the calculation of required minimum remittances under § 3010.183 shall be obtained from the Commission’s prior determinations.

#### § 3010.183 Calculation of retirement obligation rate authority.

(a) *Formulas*—(1) The formula for calculating the amount of retirement obligation rate authority available under this subpart, described in paragraph (b)(1) of this section, is as follows:

Additional rate authority in fiscal year  $T+1$  =

$$\left(1 + \frac{AP_T}{TR_T} - PARA_T\right)^{\frac{1}{5-N}} - 1$$

Where,

$T$  = most recently completed fiscal year  
 $AP_T$  = total amortization payment for fiscal year  $T$

$TR_T$  = total revenue in fiscal year  $T$

$PARA_T$  = previously authorized retirement obligation rate authority, compounded through fiscal year  $T$ , expressed as a proportion of the market dominant rate base and calculated using the formula in paragraph (a)(2) of this section as described in paragraph (b)(2) of this section

$N$  = number of previously issued determinations in which retirement obligation rate authority was made available under this subpart

(2) The formula for calculating the amount of previously authorized retirement obligation rate authority through fiscal year  $T$ , described in paragraph (b)(2) of this section, is as follows:

Previously authorized retirement obligation rate authority through fiscal year  $T$  =

$$1 - \left( \prod_{t=T-N}^T (1 + r_t) \right)^{-1}$$

Where,

$T$  = most recently completed fiscal year  
 $r_t$  = retirement obligation rate authority authorized in fiscal year  $t$

$N$  = number of previously issued determinations in which retirement obligation rate authority was made available under this subpart

(c) *Calculations*—(1) The amount of retirement obligation rate authority available for a fiscal year shall be

calculated in four steps. First, the ratio of the total amortization payment for the fiscal year under review to the total revenue in the fiscal year under review shall be added to 1. This sum represents the factor by which an equal increase in market dominant and competitive rates in the fiscal year under review would generate sufficient additional revenue to make the full amortization payment. It does not account, however, for any previous rate authority authorized under this subpart. The second step is therefore to subtract the proportion of the market dominant rate base resulting from previously authorized retirement obligation rate authority. That proportion is calculated using the formula in § 3010.184(a)(2) as described in § 3010.183(b)(2). Third, to amortize the resulting amount of retirement obligation rate authority over the remainder of the phase-in period, the

difference shall be raised to the power of the inverse of the number of determinations remaining in the phase-in period, including the current determination. Finally, 1 shall be subtracted from the result to convert from a proportional change in rates to a percentage of rate adjustment authority.

(2) The amount of previously authorized retirement obligation rate authority shall be calculated in two steps. First, the sums of 1 and the amount of retirement obligation rate authority authorized in each of the previous fiscal years shall be multiplied together. This product represents the compounded amount of such rate authority, expressed as a net rate increase. To express this product as a proportion of the market dominant rate base, the second step is to subtract the inverse of this product from 1.

#### § 3010.184 Required minimum remittances.

(a) *Minimum remittances.* During each fiscal year subsequent to the year of the effective date of this subpart, the Postal Service shall remit towards the liabilities identified in § 3010.182 an amount equal to or greater than the amount of revenue collected as a result of all previous rate increases under this subpart during the previous fiscal year, as calculated using the formulas in paragraph (b) of this section, as described in paragraph (c) of this section.

(b) *Formulas*—(1) The formula for calculating the amount of revenue collected under this subpart during a fiscal year, described in paragraph (c)(1) of this section, is as follows:

Amount of revenue =

$$MDR_T \left( 1 - \left( \prod_{t=T-N}^T 1 + (p_t)(r_t) \right)^{-1} \right)$$

Where,

T = most recently completed fiscal year  
MDR<sub>T</sub> = market dominant revenue in fiscal year T  
N = number of previously issued determinations in which retirement obligation rate authority was made available under this subpart

r<sub>t</sub> = retirement obligation rate authority authorized in fiscal year t  
p<sub>t</sub> = prorated fraction of r<sub>t</sub> that was in effect during fiscal year T, calculated using the formula in paragraph (a)(2) of this section, as described in paragraph (b)(2) of this section

(2) The formula for calculating the prorated fraction of retirement obligation rate authority authorized in a particular fiscal year t that was in effect during the most recently completed fiscal year, described in paragraph (c)(2) of this section, is as follows:

Prorated fraction =

$$\begin{cases} 0, & \text{if } r_t \text{ was not in effect during fiscal year T} \\ 1, & \text{if } r_t \text{ was in effect for all of fiscal year T} \\ \frac{\left( \frac{E_Q}{D_Q} \right) (QMDV_Q) + \sum_{i=Q+1}^4 QMDV_i}{MDV_T}, & \text{if } r_t \text{ came into effect during fiscal year T} \end{cases}$$

Where,

T = most recently completed fiscal year  
r<sub>t</sub> = retirement obligation rate authority authorized under this subpart in fiscal year t  
Q = the number of the quarter during the fiscal year of the effective date of the price increase including retirement obligation rate authority made available under this subpart  
E<sub>Q</sub> = number of days in quarter Q subsequent to and including the effective date of the price increase  
D<sub>Q</sub> = total number of days in quarter Q  
QMDV<sub>Q</sub> = market dominant volume in quarter Q  
MDV<sub>T</sub> = market dominant volume in fiscal year T

(c) *Calculations*—(1) The amount of revenue collected under this subpart

during a fiscal year, as calculated by the formula in paragraph (a)(1) of this section, shall be calculated in three steps. First, the sums of 1 and the amount of retirement obligation rate authority made available under this subpart during each previous fiscal year—prorated to account for mid-year price increases as described in paragraph (b)(2) of this section—shall be multiplied together. This product represents the proportion by which prices were higher during the most recently completed during the fiscal year as a result of retirement obligation rate authority. Second, to express this net price increase as a proportion of market dominant revenue, the inverse of

this product shall be subtracted from 1. Finally, the result shall be multiplied by market dominant revenue for the fiscal year to change the proportion into a dollar amount.

(2) The prorated fraction of retirement obligation rate authority authorized in a particular fiscal year that was in effect during the most recently completed fiscal year, as calculated by the formula in paragraph (b)(2) of this section, shall be a piecewise function of three parts. First, if the retirement obligation rate authority authorized in a particular year was not in effect during the most recently completed fiscal year, the prorated fraction shall be 0. Second, if the retirement obligation rate authority

authorized in a particular year was in effect during the entirety of the most recently completed fiscal year, the prorated fraction shall be 1. Finally, if the retirement obligation rate authority authorized in a particular fiscal year was used to raise prices during the most recently completed fiscal year, the prorated fraction shall be the proportion of volume sent during the fiscal year after that rate increase went into effect.

(c) This proportion shall be calculated in four steps. First, the number of days of the fiscal quarter after and including the effective date of the price adjustment including the retirement obligation rate authority shall be divided by the total number of days in that fiscal quarter. This quotient determines the proportion of days in that quarter in which the higher rates were in effect. Second, that quotient shall be multiplied by the market dominant volume from that fiscal quarter to determine the amount of volume during the quarter receiving the higher rates. Third, that product shall be added to the market dominant volume from any subsequent quarters of the fiscal year because the volume in those quarters was also sent under the higher rates. Finally, this sum shall be divided by the total market dominant volume from the fiscal year to determine the proportion of annual volume sent after the rate increase went into effect.

#### **§ 3010.185 Forfeiture.**

(a) If any of the circumstances described in paragraphs (b) through (d) of this section occur, the Postal Service shall not be eligible for future retirement obligation rate authority under this subpart, and the Commission may commence additional proceedings as appropriate.

(b) If, subsequent to 45 calendar days after the effective date of this subpart and prior to the end of the phase-in period, the Postal Service fails to timely file the notice required under § 3010.181(b);

(c) In any fiscal year in which retirement obligation rate authority was determined to be available under this subpart, the Postal Service fails to timely file under § 3010.122 for a rate increase including the full amount of retirement obligation rate authority authorized under this subpart during that fiscal year, to take effect prior to the end of that fiscal year; or

(d) In any fiscal year including or subsequent to the first fiscal year in which rate authority under this subpart was used to adjust market dominant rates, the Postal Service's total payments towards the supplemental and unfunded liabilities identified in

§ 3010.182 are not equal to or greater than the minimum remittance required for that fiscal year under § 3010.184(a).

### **Subpart F—Performance-Based Rate Authority**

#### **§ 3010.200 Applicability.**

(a) This subpart allocates performance-based rate authority of 1 percentage point for each class of mail, which is available upon meeting or exceeding both an operational efficiency-based requirement and adhering to a service standard-based requirement. This rate authority is allocated based on both meeting the operational efficiency-based requirement appearing in § 3010.201 and meeting the service standard-based requirement appearing in § 3010.202.

(b) The Postal Service shall file a notice with the Commission by December 31 of each year that demonstrates whether or not performance-based rate authority is eligible to be authorized under this subpart.

(c) The Commission shall review the Postal Service's notice and any challenges filed pursuant to § 3010.202(b) and announce how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission's announcement;

(2) Must be included in the calculation of the maximum rate adjustment authority in the first generally applicable rate adjustment filed after the Commission's announcement;

(3) Shall lapse if unused, 12 months after the Commission's announcement; and

(4) May not be used to generate unused rate authority, nor shall it affect existing banked rate authority.

#### **§ 3010.201 Operational efficiency-based requirement.**

The operational efficiency-based requirement is met if the Postal Service's Total Factor Productivity for the measured fiscal year exceeds the previous fiscal year as determined by the Commission.

#### **§ 3010.202 Service standard-based requirement.**

(a) The service standard-related criteria is met if all of the Postal Service's service standards (including applicable business rules) for that class during the applicable fiscal year meet or exceed the service standards in place for the prior fiscal year on a nationwide or

substantially nationwide basis as determined by the Commission.

(b) Any interested person may file a challenge to the notice provided by the Postal Service under § 3010.200(b) by March 15 of each year. The scope of such a challenge shall be limited to whether or not the Postal Service's service standards (including applicable business rules) during the applicable fiscal year met or exceeded the service standards in place for the prior fiscal year on a nationwide or substantially nationwide basis. The Commission shall issue an order which rules on any challenge as soon as practicable.

### **Subpart G—Non-Compensatory Classes or Products**

#### **§ 3010.220 Applicability.**

This subpart is applicable to a class or product where the attributable cost for that class or product exceeded the revenue from that class or product as determined by the Commission. Section 3010.221 is applicable where the attributable cost for a product within a class exceeded the revenue from that particular product. Section 3010.222 is applicable where the attributable cost for an entire class exceeded the revenue from that class.

#### **§ 3010.221 Individual product requirement.**

Whenever the Postal Service files a rate adjustment filing affecting a class of mail which includes a product where the attributable cost for that product exceeded the revenue from that product, as determined by the Commission, the Postal Service shall increase the rates for each non-compensatory product by a minimum of 2 percentage points above the percentage increase for that class. This section does not create additional rate authority applicable to any class of mail.

#### **§ 3010.222 Class requirement and additional class rate authority.**

(a) This section provides 2 percentage points of additional rate authority for any class of mail where the attributable cost for that class exceeded the revenue from that class as determined by the Commission. This additional rate authority is optional and may be used at the Postal Service's discretion.

(b) The Commission shall announce how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission's announcement;

(2) Must be included in the calculation of the maximum rate adjustment authority change in rates in the first generally applicable rate

adjustment filed after the Commission's announcement;

(3) Shall lapse if unused, within 12 months of the Commission's announcement; and

(4) May not be used to generate unused rate authority, nor shall it affect existing banked rate authority.

#### **Subpart H—Accumulation of Unused and Disbursement of Banked Rate Adjustment Authority**

##### **§ 3010.240 General.**

Unless a specific exception applies, unused rate adjustment authority, on a class-by-class basis, shall be calculated for each rate adjustment filing. Unused rate adjustment authority shall be added to the schedule of banked rate authority in each instance, and be available for application to rate adjustments pursuant to the requirements of this subpart.

##### **§ 3010.241 Schedule of banked rate adjustment authority.**

Upon the establishment of unused rate adjustment authority, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of banked rate authority on a class-by-class basis. At a minimum, the schedule must track the amount of banked rate authority available immediately prior to the rate adjustment filing and the amount of banked rate authority available upon acceptance of the rates included in the rate adjustment filing. It shall also track all changes to the schedule, including the docket numbers of Commission decisions affecting the schedule, the dates and amounts that any rate authority was generated or subsequently expended, and the expiration dates of all rate adjustment authority. The schedule shall be included with any rate adjustment filing purporting to modify the amount of banked rate adjustment authority.

##### **§ 3010.242 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed 12 months apart or less.**

(a) When rate adjustment filings that involve a rate increase are filed 12 months apart or less, unused rate adjustment authority for a class is equal to the difference between the maximum rate adjustment authority as summarized by § 3010.127 and calculated pursuant to subparts C through H of this part, as appropriate, and the percentage change in rates for the class calculated pursuant to § 3010.128, subject to the limitations described in paragraphs (b) and (c) of this section.

(b) Unused rate adjustment authority cannot be generated and is assumed to be 0 percent for classes subject to § 3010.222, Class requirement and additional class rate authority.

(c) For rate adjustment filings that involve a rate increase, unused rate adjustment authority cannot exceed the unused portion of rate authority calculated pursuant to subpart C of this part.

##### **§ 3010.243 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed more than 12 months apart.**

(a) When rate adjustment filings that involve a rate increase are filed more than 12 months apart, any interim rate adjustment authority must first be added to the schedule of banked rate authority before the unused rate adjustment authority is calculated.

(b) Interim rate adjustment authority for a class is equal to the Base Average applicable to the second rate adjustment filing (as developed pursuant to § 3010.142) divided by the Recent Average utilized in the first rate adjustment filing (as developed pursuant to § 3010.142) and subtracting 1 from the quotient. The result is expressed as a percentage and immediately added to the schedule of banked rate authority as of the date the rate adjustment filing is filed.

(c) Unused rate adjustment authority for a class is equal to the difference between the maximum rate adjustment authority as summarized by § 3010.127 and calculated pursuant to subparts C through H of this part, as appropriate, and the percentage change in rates for the class calculated pursuant to § 3010.128, subject to the limitations described in paragraphs (d) and (e) of this section.

(d) Unused rate adjustment authority cannot be generated and is assumed to be 0 percent for classes subject to § 3010.222, Class requirement and additional class rate authority.

(e) For rate adjustment filings that involve a rate increase, unused rate adjustment authority cannot exceed the unused portion of rate authority calculated pursuant to subpart C of this part.

##### **§ 3010.244 Calculation of unused rate adjustment authority for rate adjustments that only include rate decreases.**

(a) For rate adjustment filings that only include rate decreases, unused rate adjustment authority for a class is calculated in two steps. First, the difference between the maximum rate adjustment authority as summarized by § 3010.127 and calculated pursuant to subparts C through H of this part, as

appropriate, for the most recent rate adjustment that involves a rate increase and the percentage change in rates for the class calculated pursuant to § 3010.128(d) is calculated. Second, the unused rate adjustment authority generated in the most recent rate adjustment that involves a rate increase is subtracted from that result.

(b) 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 rate adjustment that involves a rate increase on the schedule maintained under § 3010.241. For purposes of § 3010.244, 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 § 3010.241 on the same date as the most recent rate adjustment filing that involves a rate increase.

(c) For rate adjustment filings that only include rate decreases, the sum of unused rate adjustment authority generated under paragraph (a) of this section and the unused rate adjustment authority generated in the most recent rate adjustment that involves a rate increase cannot exceed the unused portion of rate adjustment authority calculated pursuant to subpart C of this part in the most recent rate adjustment that involves a rate increase.

(d) Unused rate adjustment authority generated under paragraph (a) of this section shall be subject to the limitation under § 3010.245, regardless of whether it is used alone or in combination with other existing unused rate adjustment authority.

(e) For rate adjustment filings that only include rate decreases, unused rate adjustment authority generated under this section lapses 5 years from the date of filing of the most recent rate adjustment filing that involves a rate increase.

(f) A rate adjustment filing that only includes rate decreases that is filed immediately after a rate adjustment due to extraordinary or exceptional circumstances (*i.e.*, without an intervening rate adjustment involving a rate increase) may not generate unused rate adjustment authority.

##### **§ 3010.245 Application of banked rate authority.**

(a) Banked rate authority may be applied to any planned rate adjustment subject to the limitations appearing in paragraphs (b) through (f) of this section.

(b) Banked rate authority may only be applied to a proposal to adjust rates

after applying rate authority as described in subparts C through F of this part and in § 3010.222, Class requirement and additional class rate authority.

(c) A maximum of 2 percentage points of banked rate authority may be applied to a rate adjustment for any class in any 12-month period. If banked rate authority is used, it shall be subtracted from the schedule of banked rate adjustment authority as of the date of the final order accepting the rates.

(d) Subject to paragraphs (b) and (c) of this section, interim rate adjustment authority may be used to make a rate adjustment pursuant to the rate adjustment filing that led to its calculation. If interim rate adjustment authority is used to make such a rate adjustment, the interim rate adjustment authority generated pursuant to the rate adjustment filing shall first be added to the schedule of banked rate adjustment authority pursuant to § 3010.241 as the most recent entry. Then, any interim rate adjustment authority used in accordance with this paragraph shall be subtracted from the existing banked rate adjustment authority using a first-in, first-out (FIFO) method, beginning 5 years before the instant rate adjustment filing.

(e) Banked rate authority for a class must be applied, using a first-in, first-out (FIFO) method, beginning 5 years before the instant rate adjustment filing.

(f) Banked rate adjustment authority calculated under this section shall lapse 5 years from the date of the rate adjustment filing leading to its calculation.

### Subpart I—Rate Adjustments Due to Extraordinary and Exceptional Circumstances

#### § 3010.260 General.

The Postal Service may request to adjust rates for market dominant products due to extraordinary or exceptional circumstances pursuant to 39 U.S.C. 3622(d)(1)(E). The rate adjustments are not subject to rate adjustment limitations or the restrictions on the use of unused rate adjustment authority. The rate adjustment request may not include material classification changes. The request is subject to public participation and Commission review within 90 days.

#### § 3010.261 Contents of a request.

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

(b) A schedule of the planned rates.

(c) Calculations quantifying the increase for each affected product and class.

(d) 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.

(e) 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.

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

(g) 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.

(h) 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.

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

#### § 3010.262 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide additional information in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate adjustments requested. The Postal Service shall include within its request the identification of one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification or additional information.

#### § 3010.263 Docket and notice.

(a) The Commission will establish a docket for each request to adjust rates due to extraordinary or exceptional circumstances, publish notice of the request in the **Federal Register**, and post the filing on its website. The notice shall include the items specified in paragraphs (b) through (g) of this section.

(b) The general nature of the proceeding.

(c) A reference to legal authority under which the proceeding is to be conducted.

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

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

(f) A specified period for public comment.

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

#### § 3010.264 Public hearing.

(a) The Commission will hold a public hearing on the Postal Service's 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 supporting information.

(b) 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.

(c) 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.

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

#### § 3010.265 Opportunity for comments.

(a) 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;

(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.

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

#### § 3010.266 Deadline for Commission decision.

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. The Commission will act expeditiously on the Postal Service's 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.

**§ 3010.267 Treatment of banked rate adjustment authority.**

(a) Each request will identify the banked 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) Rate adjustments may use existing banked rate adjustment authority in amounts greater than the limitations described in § 3010.245.

(c) Increases will exhaust all banked 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.

**Subpart J—Workshare Discounts**

**§ 3010.280 Applicability.**

This subpart is applicable whenever the Postal Service proposes to adjust a rate associated with a workshare discount. For the purpose of this subpart, the cost avoided by the Postal Service for not providing the applicable service refers to the amount identified in the most recently applicable Annual Compliance Determination, unless the Commission otherwise provides.

**§ 3010.281 Calculation of passthroughs for workshare discounts.**

For the purpose of this subpart, the percentage passthrough for any workshare discount shall be calculated by dividing the workshare discount by the cost avoided by the Postal Service for not providing the applicable service and expressing the result as a percentage.

**§ 3010.282 Increased pricing efficiency.**

(a) For a workshare discount that is equal to the cost avoided by the Postal Service for not providing the applicable service, no proposal to adjust a rate associated with that workshare discount may change the size of the discount.

(b) For a workshare discount that exceeds the cost avoided by the Postal Service for not providing the applicable service, no proposal to adjust a rate associated with that workshare discount may increase the size of the discount.

(c) For a workshare discount that is less than the cost avoided by the Postal

Service for not providing the applicable service, no proposal to adjust a rate associated with that workshare discount may decrease the size of the discount.

**§ 3010.283 Limitations on excessive discounts.**

(a) No proposal to adjust a rate may set a workshare discount that would exceed the cost avoided by the Postal Service for not providing the applicable service, unless at least one of the following reasons provided in paragraphs (b) through (e) of this section applies.

(b) The proposed workshare discount is associated with a new postal service, a change to an existing postal service, or a new workshare initiative.

(c) The proposed workshare discount is a minimum of 20 percent less than the existing workshare discount.

(d) The proposed workshare discount is set in accordance with a Commission order issued pursuant to § 3010.286.

(e) The proposed workshare discount is provided in connection with a subclass of mail, consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39 U.S.C. 3622(e)(2)(C)) and is in compliance with § 3010.285(c).

**§ 3010.284 Limitations on discounts below avoided cost.**

(a) No proposal to adjust a rate may set a workshare discount that would be below the cost avoided by the Postal Service for not providing the applicable service, unless at least one of the following reasons provided in paragraphs (b) through (e) of this section applies.

(b) The proposed workshare discount is associated with a new postal service, a change to an existing postal service, or a new workshare initiative.

(c) The proposed workshare discount is a minimum of 20 percent more than the existing workshare discount.

(d) The proposed workshare discount is set in accordance with a Commission order issued pursuant to § 3010.286.

(e) The percentage passthrough for the proposed workshare discount is at least 85 percent.

**§ 3010.285 Proposal to adjust a rate associated with a workshare discount.**

(a) Each proposal to adjust a rate associated with a workshare discount shall be supported by substantial evidence and demonstrate that each proposed workshare discount has been set in compliance with 39 U.S.C. 3622(e) and this subpart. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(b) For each proposed workshare discount that would exceed the cost avoided by the Postal Service for not providing the applicable service, the rate adjustment filing shall indicate the applicable paragraph of § 3010.283 under which the Postal Service is justifying the excessive discount and include any relevant analysis supporting the claim.

(c) For each proposed workshare discount that is provided in connection with a subclass of mail, consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39 U.S.C. 3622(e)(2)(C)), would exceed the cost avoided by the Postal Service for not providing the applicable service, and would not be set in accordance with at least one specific provision appearing in § 3010.283(b) through (d), the rate adjustment filing shall provide the information specified in paragraphs (c)(1) through (3) of this section:

(1) The number of mail owners receiving the workshare discount during the most recent full fiscal year and for the current fiscal year to date;

(2) The number of mail owners for the applicable product or products in the most recent full fiscal year and for the current fiscal year to date; and

(3) An explanation of how the proposed workshare discount would promote the public interest, even though the proposed workshare discount would substantially exceed the cost avoided by the Postal Service.

(d) For each proposed workshare discount that would be below the cost avoided by the Postal Service for not providing the applicable service, the rate adjustment filing shall indicate the applicable paragraph of § 3010.284 under which the Postal Service is justifying the discount that is below the cost avoided and include any relevant analysis supporting the claim.

**§ 3010.286 Application for waiver.**

(a) In every instance in which the Postal Service determines to adjust a rate associated with a workshare discount in a manner that does not comply with the limitations imposed by §§ 3010.283 through 3010.284, the Postal Service shall file an application for waiver. The Postal Service must file any application for waiver at least 60 days prior to filing the proposal to adjust a rate associated with the applicable workshare discount. In its application for waiver, the Postal Service shall indicate the approximate filing date for its next rate adjustment filing.

(b) The application for waiver shall be supported by a preponderance of the

evidence and demonstrate that a waiver from the limitations imposed by §§ 3010.283 through 3010.284 should be granted. Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(c) The application for waiver shall include a specific and detailed statement signed by one or more knowledgeable Postal Service official(s) who sponsors the application and attests to the accuracy of the information contained within the statement. The statement shall set forth the information specified in paragraphs (c)(1) through (8) of this section, as applicable to the specific workshare discount for which a waiver is sought:

(1) The reason(s) why a waiver is alleged to be necessary (with justification thereof), including all relevant supporting analysis and all assumptions relied upon.

(2) The length of time for which a waiver is alleged to be necessary (with justification thereof).

(3) For each subsequent rate adjustment filing planned to occur during the length of time for which a waiver is sought, a representation of the proposed minimum amount of the change to the workshare discount.

(4) For a claim that the amount of the workshare discount exceeding the cost avoided by the Postal Service for not providing the applicable service is necessary in order to mitigate rate shock (39 U.S.C. 3622(e)(2)(B)), the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(4)(i) through (iii) of this section:

(i) A description of the customers that the Postal Service claims would be adversely affected.

(ii) Prices and volumes for the workshare discount at issue (the benchmark and workshared mail category) for the last 10 years.

(iii) Quantitative analysis or, if not available, qualitative analysis indicating the nature and extent of the likely harm to the customers that would result from setting the workshare discount in compliance with § 3010.283(c).

(5) For a claim that setting an excessive or low 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, the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(5)(i) through (iii) of this section:

(i) A description of the operational strategy at issue.

(ii) Quantitative analysis or, if not available, qualitative analysis indicating how the workshare discount at issue is related to that operational strategy.

(iii) How setting the workshare discount in compliance with § 3010.283(c) or § 3010.284(c), whichever is applicable, would impede that operational strategy.

(6) For a claim that reducing or eliminating the excessive workshare discount would lead to a loss of volume in the affected category of mail and reduce the aggregate contribution to the Postal Service's institutional costs from the mail that is subject to the discount (39 U.S.C. 3622(e)(3)(A)), the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(6)(i) through (iii) of this section:

(i) A description of the affected category of mail.

(ii) Quantitative analysis or, if not available, qualitative analysis indicating the expected loss of volume and reduced contribution that is claimed would result from reducing or eliminating the excessive workshare discount.

(iii) How setting the excessive workshare discount in compliance with § 3010.283(c) would lead to the expected loss of volume and reduced contribution.

(7) For a claim that reducing or eliminating the excessive workshare discount would result in a further increase in the rates paid by mailers not able to take advantage of the workshare discount (39 U.S.C. 3622(e)(3)(B)), the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(7)(i) through (iii) of this section:

(i) A description of the mailers not able to take advantage of the discount.

(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 § 3010.283(c) 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.

(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 3020—PRODUCT LISTS

■ 2. The authority citation for part 3020 continues to read as follows:

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

■ 3. Amend § 3020.32 by revising paragraphs (a) and (b) to read as follows:

### § 3020.32 Supporting justification.

\* \* \* \* \*

(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;

\* \* \* \* \*

■ 4. Amend § 3020.52 by revising paragraphs (a) and (b) to read as follows:

### § 3020.52 Supporting justification.

\* \* \* \* \*

(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;

\* \* \* \* \*

■ 5. Amend § 3020.72 by revising paragraphs (a) and (b) to read as follows:

**§ 3020.72 Supporting justification.**

\* \* \* \* \*

(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;

\* \* \* \* \*

■ 6. Amend § 3020.81 by revising paragraph (b)(1) to read as follows:

**§ 3020.81 Supporting justification for material changes to product descriptions.**

\* \* \* \* \*

(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

\* \* \* \* \*

■ 7. Amend § 3020.82 by revising paragraph (e) to read as follows:

**§ 3020.82 Docket and notice of material changes to product descriptions.**

\* \* \* \* \*

(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.

■ 8. Amend § 3020.90 by revising paragraph (c)(2) to read as follows:

**§ 3020.90 Minor corrections to product descriptions.**

\* \* \* \* \*

(c) \* \* \*

(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

\* \* \* \* \*

■ 9. Amend § 3020.91 by revising paragraph (e) to read as follows:

**§ 3020.91 Docket and notice of minor corrections to product descriptions.**

\* \* \* \* \*

(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.

■ 10. Add subpart G to read as follows:

**Subpart G—Requests for Market Dominant Negotiated Service Agreements**

Sec.

3020.120 General.

3020.121 Additional supporting justification for negotiated service agreements.

3020.122 Data collection plan and report for negotiated service agreements.

**§ 3020.120 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 § 3020.121 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 Postal 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.

**§ 3020.121 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

(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.

**§ 3020.122 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 3050—PERIODIC REPORTING**

■ 11. The authority citation for part 3050 continues to read as follows:

**Authority:** 39 U.S.C. 503; 3651; 3652; 3653.

■ 12. Amend § 3050.20 by revising paragraph (c) to read as follows:

**§ 3050.20 Compliance and other analyses in the Postal Service's section 3652 report.**

\* \* \* \* \*

(c) It shall address such matters as non-compensatory rates and failures to achieve stated goals for on-time delivery standards. A more detailed analysis is required when the Commission observed and commented upon the

same matter in its Annual Compliance Determination for the previous fiscal year.

■ 13. Amend § 3050.21 by:

■ a. Revising paragraphs (a), (e), and (m); and

■ b. Adding paragraphs (n) and (o).

The revisions and additions read as follows:

**§ 3050.21 Content of the Postal Service's section 3652 report.**

(a) No later than 90 days after the close of each fiscal year, the Postal Service shall submit a report to the Commission analyzing its cost, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of the United States Code. The report shall provide the items in paragraphs (b) through (o) of this section.

\* \* \* \* \*

(e) For each market dominant workshare discount offered during the reporting year:

(1) The per-item cost avoided by the Postal Service by virtue of such discount;

(2) The percentage of such per-item cost avoided that the per-item workshare discount represents;

(3) The per-item contribution made to institutional costs;

(4) The factual and analytical bases for any claim that one or more of the exception provisions of 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) apply; and

(5) For each workshare discount that is provided in connection with a subclass of mail, consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39 U.S.C. 3622(e)(2)(C)), exceeded the cost avoided by the Postal Service for not providing the applicable service, and was not set in accordance with at least one specific provision appearing in § 3010.262(b) through (d) of this chapter, the information specified in paragraphs (5)(i) through (iii) of this section:

(i) The number of mail owners receiving the workshare discount;

(ii) The number of mail owners for the applicable product or products; and

(iii) An explanation of how the workshare discount promotes the public interest, even though the workshare discount substantially exceeds the cost avoided by the Postal Service.

\* \* \* \* \*

(l) For the Inbound Letter Post product, provide revenue, volume, attributable cost, and contribution data by Universal Postal Union country

group and by shape for the fiscal year subject to review and each of the preceding 4 fiscal years;

(m) Input data and calculations used to produce the annual Total Factor Productivity estimates;

(n) Copies of notifications to the Postal Service by the Office of Personnel Management (OPM) of annual determinations of the funding amounts specific to payments at the end of each fiscal year computed under 5 U.S.C. 8909a(d)(2)(B) and 5 U.S.C. 8909a(d)(3)(B)(ii); 5 U.S.C. 8348(h)(2)(B) and 5 U.S.C. 8423(b)(3)(B); 5 U.S.C. 8423(b)(1)(B) and 5 U.S.C. 8423(b)(2); and

(o) Provide any other information that the Postal Service believes will help the Commission evaluate the Postal Service's compliance with the applicable provisions of title 39 of the United States Code.

■ 14. Add § 3050.55 to read as follows:

**§ 3050.55 Information pertaining to cost reduction initiatives.**

(a) The reports in paragraphs (b) through (f) of this section shall be filed with the Commission at the times indicated.

(b) Within 95 days after the end of each fiscal year, the Postal Service shall file a financial report that analyzes cost data from the fiscal year. For purposes of this paragraph, the percentage change shall compare the fiscal year under review to the previous fiscal year. At a minimum, the report shall include:

(1) For all market dominant mail, the percentage change in total unit attributable cost;

(2) For each market dominant mail product, the percentage change in unit attributable cost;

(3) For the system as a whole, total average cost per piece, which includes all Postal Service competitive and market dominant attributable costs and institutional costs,

(4) The percentage change in total average cost per piece;

(5) Market dominant unit attributable cost by product;

(6) If the percentage change in unit attributable cost for a market dominant mail product is more than 0.0 percent and exceeds the percentage change in total market dominant mail unit attributable cost, then the following information shall be provided:

(i) Unit attributable cost workpapers for the product disaggregated into the following cost categories: Mail processing unit cost, delivery unit cost, vehicle service driver unit cost, purchased transportation unit cost, window service unit cost, and other unit cost;

(ii) A narrative that identifies cost categories that are driving above average increases in unit attributable cost for the product and explains the reason for the above-average increase; and

(iii) A specific plan to reduce unit attributable cost for the product.

(7) An analysis of volume trends and mail mix changes for each market dominant mail product from fiscal year 2017 through the end of the fiscal year under review, which shall include at a minimum:

(i) A comparison of actual unit attributable costs and estimated unit attributable costs for each market dominant mail product, using the volume distribution from fiscal year 2017;

(ii) A narrative that identifies the drivers of change in volume trends and the mail mix; and

(iii) A narrative that explains the methodology used to calculate the estimated unit attributable costs as required by paragraph (b)(7)(i) of this section.

(c) Within 95 days after the end of each fiscal year, the Postal Service shall file a report with analysis of each planned cost reduction initiative that is expected to require Postal Service total expenditures of \$5 million or more over the duration of the initiative. At a minimum, the report shall include:

(1) A narrative that describes each cost reduction initiative planned for future fiscal years, including the status, the expected total expenditure, start date, end date, and any intermediate deadlines;

(2) Identification of a metric to measure the impact of each planned cost reduction initiative identified in paragraph (c)(1) of this section, a narrative describing the selected metric, a narrative explaining the reason for selecting that metric, and a schedule approximating the months and fiscal years in which the cost reduction impact is expected to be measureable;

(3) Estimates of the expected impact of each planned cost reduction initiative, with supporting workpapers,

using the metric identified in paragraph (c)(2) of this section, total market dominant mail attributable unit cost, and total unit cost as calculated pursuant to paragraph (b)(3) of this section.

(d) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that describes each active cost reduction initiative during the fiscal year which incurred or is expected to incur Postal Service expenditures of \$5 million or more over the duration of the initiative. At a minimum, the report shall include:

(1) The information described in paragraphs (c)(1) through (c)(3) of this section, based on actual data for the fiscal year, and a specific statement as to whether the initiative actually achieved the expected impact as measured by the selected metric;

(2) An explanation of the trends, changes, or other reasons that caused any variance between the actual information provided under paragraph (d)(1) of this section and the estimated information previously provided under paragraphs (c)(1) through (c)(3) of this section, if applicable;

(3) A description of any mid-implementation adjustments the Postal Service has taken or will take to align the impacts with the schedule; and

(4) Any revisions to the schedule of cost reduction impacts for future fiscal years.

(e) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that summarizes all projects associated with a Decision Analysis Report for the fiscal year. At a minimum, the report shall include:

(1) A description of each project;

(2) The status of each project;

(3) An estimate of cost savings or additional revenues from each project; and

(4) The return on investment expected from each project.

(f) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that summarizes all planned projects that will require a Decision

Analysis Report in the next fiscal year. At a minimum, the report shall include:

(1) A description of each planned project;

(2) The status of each project;

(3) An estimate of the cost savings or additional revenues expected from each project; and

(4) The return on investment expected from each project.

■ 15. Amend § 3050.60 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (e);

■ c. Redesignating paragraphs (f) and (g) as paragraphs (e); and (f).

The revision reads as follows:

#### **§ 3050.60 Miscellaneous reports and documents.**

(a) The reports in paragraphs (b) through (f) of this section shall be provided at the times indicated.

\* \* \* \* \*

#### **PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING**

■ 16. The authority citation for part 3055 continues to read as follows:

**Authority:** 39 U.S.C. 503; 3622(a); 3652(d) and (e); 3657(c).

■ 17. Amend § 3055.2 by revising paragraph (c) to read as follows:

#### **§ 3055.2 Contents of the annual report of service performance achievements.**

\* \* \* \* \*

(c) The applicable service standard(s) for each product. If there has been a change to a service standard(s) since the previous report, a description of and reason for the change shall be provided. If there have been no changes to service standard(s) since the previous report, a certification stating this fact shall be provided.

\* \* \* \* \*

By the Commission.

**Darcie S. Tokioka,**  
*Acting Secretary.*

[FR Doc. 2019-26573 Filed 12-10-19; 8:45 am]

**BILLING CODE 7710-FW-P**