



POSTAL REGULATORY COMMISSION

39 CFR Part 3030

[Docket No. RM2021-2; Order No. 5816]

Market Dominant Products

AGENCY: Postal Regulatory Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commission is initiating a review seeking input from the public about what additional regulations promulgated by the Commission may be necessary to achieve the objectives of the Postal Accountability and Enhancement Act (PAEA) particularly related to maximizing incentives to increase efficiency and reduce costs, maintaining high-quality service standards, and assuring financial stability (including retained earnings). This advance notice informs the public of the docket's initiation, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 15, 2021. *Reply comments are due:* May 17, 2021.

ADDRESSES: 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:

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I. Introduction

Pursuant to 39 U.S.C. 3622(d)(3), the Commission issues this advance notice of proposed rulemaking to seek input from the public about what additional regulations promulgated by the Commission may be necessary to achieve the objectives of the Postal Accountability and Enhancement Act (PAEA)¹ over the longer-term, particularly related to maximizing incentives to increase efficiency and reduce costs, maintaining high-quality service standards, and assuring financial stability (including retained earnings).

II. Background

In Docket No. RM2017-3, the Commission found that the existing Market Dominant ratemaking system did not achieve the PAEA's objectives during the 10 years following the PAEA's enactment.² The Commission's findings were premised in part on the existing ratemaking system's inability to assure financial stability (including retained earnings), maximize incentives to reduce costs and increase efficiency, and maintain high-quality service standards. See Order No. 4257 at 3-5, 274-275. During the PAEA era, the existing ratemaking system was inadequate, which resulted in an accumulated deficit,³ maximum use of the

¹ Pub. L. 109-435, 201, 120 Stat. 3198, 3204 (2006).

² See Docket No. RM2017-3, Order Adopting Final Rules for the System of Regulating Rates and Classes for Market Dominant Products, November 30, 2020, at 2 (Order No. 5763); see also Docket No. RM2017-3, Revised Notice of Proposed Rulemaking, December 5, 2019, at 7 (Order No. 5337); Docket No. RM2017-3, Notice of Proposed Rulemaking for the System for Regulating Rates and Classes for Market Dominant Products, December 1, 2017, at 26 (Order No. 4258); Docket No. RM2017-3, Order on the Findings and Determination of the 39 U.S.C. 3622 Review, December 1, 2017, at 3-5, 274-275 (Order No. 4257).

³ See Order No. 4257 at 171-172 (describing how the consecutive net losses resulted in an accumulated deficit).

Postal Service's borrowing authority and a sharp decline in capital investments,⁴ operational efficiency increases and cost reductions that were insufficient to achieve overall financial stability and/or retained earnings,⁵ and reduction of the high-quality service standards that were set in 2007.⁶

In response, the Commission modified the ratemaking system's design to encourage and enable the Postal Service to address its complex challenges by making prudent pricing and operational decisions. See Order No. 5763 at 285. Among other changes made, the modified rules provide additional rate authority to address two underlying drivers of the Postal Service's net losses that are largely outside of its direct and near-term control: (1) the increase in per-unit cost resulting from the decline in mail density for each fiscal year under subpart D of 39 CFR part 3030 of this chapter; and (2) the statutorily mandated amortization payments for particular retirement costs under subpart E of 39 CFR part 3030 of this chapter. See *id.* These principled adjustments to the price cap made by the Commission in Docket No. RM2017-3 are necessary to achieve the objectives of the PAEA, in conjunction with each other, and are focused on vital near-term improvements.

However, the objectives of the PAEA related to *maximizing* incentives to increase efficiency and reducing costs as well as *assuring* financial stability

⁴ The Postal Service lacks shareholders and instead must finance capital investments through revenue or through borrowing. Order No. 4258 at 48-49. Therefore, as consecutive years of net losses resulted in an accumulated deficit, the Postal Service relied heavily on its borrowing authority, deferred capital investments, and increased its cash reserves. See *id.* at 46-52.

⁵ Order No. 4257 at 222, 274-275 (summarizing that while some cost reductions and efficiency gains were achieved post-PAEA, they were insufficient to achieve financial stability in the medium term and long term).

⁶ *Id.* at 273. The two major service standard changes in the first 10 years after the passage of the PAEA were reviewed by the Commission, prior to implementation, in Docket Nos. N2012-1 and N2014-1. The "Network Rationalization" initiative implemented by the Postal Service included changes to the service standards for First-Class Mail, Periodicals, USPS Marketing Mail, and Package Services. The "Load Leveling" initiative included changes to the service standards for USPS Marketing Mail. *Id.* at 264-273.

(including retained earnings) set forth ambitious goals that are difficult to achieve instantaneously or simultaneously. See 39 U.S.C. 3622(b)(1) and (5). These goals must also be achieved in conjunction with other priorities over time, such as *maintaining* high-quality service standards. See *id.* section 3622(b)(3).

Consistent with the Commission's findings in Docket No. RM2017-3, Docket No. RM2021-2 is initiated to explore whether additional regulatory changes may be necessary to promote longer-term financial stability, increased efficiency and cost reductions, while maintaining high-quality service standards, and if so, how to best design these potential changes. See Order No. 5763 at 166. The Commission invites any interested party to submit comments on the following topics and asks the following questions to initiate a meaningful dialogue with stakeholders.

III. Substantive Areas for Further Refinement

A. Incentive Regulation

Performance-based regulation is a broad concept referring to a regulatory system that applies incentives to promote targeted behavior by the regulated entity.⁷ More specifically, a performance incentive mechanism (PIM), also referred to as a targeted performance incentive (TPI), is used by regulators to set a target for acceptable performance by the regulated entity in a specific area and attach financial consequences to ensure compliance. See Zarakas, *supra*. This rulemaking is initiated to explore whether and how to introduce any potential modifications to the design of the ratemaking system that would further enhance (*i.e.*, maximize over the longer-term) the Postal Service's incentives to increase

⁷ See William Zarakas, *A New Face for PBR: Aligning Incentives in the Electric Utility Ecosystem*, PUB. UTILS. FORT., December 2017 (Zarakas), available at: <https://www.fortnightly.com/fortnightly/2017/12/new-face-pbr?authkey=e0a4230ee85eb602f123c1e633c0e5b5260f9bd3f297c094c055e7868e5a4589>.

efficiency and reduce costs. Achieving such efficiencies could benefit the Postal Service by improving its longer-term financial viability and could benefit the ratepayers by leading to improved service performance. At the same time, the Commission remains mindful that further enhancing the Postal Service's incentives to increase efficiency and reduce costs may weaken the incentive to maintain high-quality service standards. The Commission also acknowledges that ratepayers may have different preferences with respect to the speed and/or the consistency of delivery service for Market Dominant products. Accordingly, to explore possible enhancements to the Market Dominant ratemaking system overall, through the introduction of direct financial consequences (such as an upward or downward adjustment to rate authority) using a PIM or a different method, the Commission raises the following discussion points:

1. Whether additional regulatory changes are needed to further enhance the Postal Service's incentives to increase efficiency and reduce costs while maintaining high-quality service standards. Why or why not?

2. How to identify and evaluate potential types of regulatory changes that would introduce direct financial consequences that would further enhance the Postal Service's incentives to increase efficiency and reduce costs while maintaining high-quality service standards? Are there any financial consequences that can be drawn from other postal systems or other regulated industries that should be considered?

3. How to identify and evaluate potential types of regulatory changes other than the connection of direct financial consequences that would further enhance the Postal Service's incentives to increase efficiency and reduce costs while maintaining high-quality service standards? Are there any non-financial

incentives that can be drawn from other postal systems or other regulated industries that should be considered?

B. Mechanism for a Financial Incentive

The Commission is interested in exploring whether a regulatory mechanism connecting direct financial consequences with increasing efficiency and reducing costs and maintaining high-quality service standards would benefit the Market Dominant ratemaking system, and how to connect the Postal Service's behavior with the financial incentive introduced. The Commission acknowledges that every proposal has tradeoffs and that it is impossible to refine the connection to a level of absolute precision.⁸ This rulemaking does not aim for this level of precision. Generally, the Commission seeks to identify an amount of a financial incentive that is both meaningful to the Postal Service (*i.e.*, would actually motivate it to engage in the desired behavior) and would neither be excessive to the ratepayers nor threaten the financial integrity of the Postal Service.

Preliminarily, the Commission is interested in exploring whether and how to introduce a financial incentive by modifying the Postal Service's authority to adjust its rates. Adjustments to rate authority could be upwards (increase rate authority), downwards (reduce rate authority), or both. See Zarakas, *supra*. An upward PIM would reward superior performance, whereas a downward PIM would penalize unsatisfactory performance. The PIM may be designed to operate simplistically: for instance, a specific upward or downward incentive is either provided or not provided, based on the observed performance. On the

⁸ See *Nat'l Ass'n of Broadcasters v. F.C.C.*, 740 F.2d 1190, 1210 (D.C. Cir. 1984) ("But administrative action generally occurs against a shifting background in which facts, predictions, and policies are in flux and in which an agency would be paralyzed if all the necessary answers had to be in before any action at all could be taken.").

other hand, a more nuanced PIM could be designed to provide a particular tier of financial incentive based on the observed performance: for instance, progressively increasing rewards or penalties.⁹ If any commenters have a basis for connecting particular requirement(s) with particular amount(s), they may include such proposals in their response to this Order.

One potential method to develop a PIM for both upward and downward adjustments would be to set a “dead-band” around historical performance.¹⁰ This type of PIM would trigger a penalty when actual performance falls below the lower target (unsatisfactory performance) and trigger a reward when actual performance exceeds the upper target (superior performance).¹¹ The lower and upper targets could be derived by measuring the standard deviation(s) from historical performance.¹² Actual performance within the dead-band (a neutral zone) would not result in a direct financial consequence.¹³

Therefore, to develop a mechanism that would balance simplicity with optimal refinement, the Commission raises the following discussion points:

1. How to identify the percentage of rate authority that would provide a meaningful incentive(s) to the Postal Service, while also not leading to excessive rate increases for mailers nor threatening the financial integrity of the Postal Service?

⁹ See Synapse Energy Economics, Inc., Melissa Whited, Tim Woolf, & Alice Napoleon, *Utility Performance Incentive Mechanisms: A Handbook for Regulators, Prepared for the Western Interstate Energy Board*, March 9, 2015 (2015 PIM Handbook), at 43-44 (demonstrating quadratic versus step functions).

¹⁰ See 2015 PIM Handbook at 38; Paul L. Joskow, *Incentive Regulation in Theory & Practice: Electricity Distribution & Transmission Networks*, January 21, 2006 (2006 Joskow), at 8, available at: <https://economics.mit.edu/files/1181>.

¹¹ See 2015 PIM Handbook at 38; see also 2006 Joskow, *supra* at 8.

¹² See 2015 PIM Handbook at 38; see also 2006 Joskow, *supra* at 8.

¹³ See 2015 PIM Handbook at 38.

2. How to identify data and methods available to develop a connection between the amount of the financial incentive(s) at stake with the observed performance (*i.e.*, the change(s) in or level(s) of efficiency, costs, and/or service standards)?

3. How to identify the relative advantages of applying incentives as upward adjustments (increasing the amount of rate authority(ies)), downward adjustments (reducing the amount of rate authority(ies)), a combination mechanism (both), or another method?

4. How best to administer the chosen method?

C. Operational Efficiency-Based Requirement

The Commission intends to explore whether and how to translate the broad policy goals of the PAEA—incentivizing the Postal Service to increase efficiency and reduce costs—into a specific PIM.

For purposes of evaluating the Postal Service’s operational efficiency, total factor productivity (TFP) is a highly comprehensive metric.¹⁴ The Commission intends to further explore whether TFP or an alternative metric is capable of producing sufficiently reliable, accurate, and transparent results that would be appropriate for use as a potential benchmark on which to condition rate authority. While the Commission’s preliminary expectation is that there is not a practical way to refine TFP to focus on only Market Dominant products (see Order No. 5337 at 134), the Commission would welcome any comments proposing a basis for doing so. There have been some changes in the TFP methodology over the years, and TFP results have been revised after-the-fact on

¹⁴ See Docket No. RM2017-3, Northwest Postal Consulting (NWPC) for the Postal Regulatory Commission, Report 1, Adequacy of the Postal Service’s TFP Model, Final Report, March 27, 2017, at 2 (NWPC Report 1) (opining that the Postal Service’s TFP Model contains significant levels of detail regarding different aspects of Labor, Capital, Materials, Mail Volume, and Possible Deliveries).

occasion.¹⁵ Accordingly, the Commission intends to review how these changes impact reliability and accuracy over time. While there is not necessarily a reason to believe that the Postal Service would attempt to influence TFP results by making unreasonable business decisions (see Order No. 5337 at 135), the Commission also intends to further explore how TFP could be refined methodologically to produce results that are adequately safeguarded against manipulation. A critical step to enable this study of TFP is to require the Postal Service to file the documentation and linked workpapers containing all formulae for its TFP methodology.¹⁶ Therefore, this Order imposes a deadline for the Postal Service to file this information of February 16, 2021.

The Commission intends to explore whether TFP can be refined to better focus on efficiency gains within the Postal Service's control or whether an alternative metric should be developed. The Postal Service has used the Deliveries per Total Workhours (DPTWH) as an alternative efficiency metric in its annual reports to Congress and to develop its Integrated Financial Plan.¹⁷ The

¹⁵ Compare, e.g., United States Postal Service, USPS Annual Tables, FY 2017 TFP (Total Factor Productivity), February 28, 2018, Excel file "table annual 2017 public (2017 cra).xlsx," tab "Tfp-52" (updating FY 2016 TFP result to 1.262) with United States Postal Service, USPS Annual Tables, FY 2016 TFP (Total Factor Productivity), March 1, 2017, Excel file "table annual 2016 public (2016 cra).xlsx," tab "Tfp-52" (reporting FY 2016 TFP result as 1.260). While the Postal Service did not provide an explanation for the updated FY 2016 TFP result, Commission analysis identified updated source data for FY 2016. Additional technical changes to the TFP are detailed in the NWPC Report 2 filed by the Commission in conjunction with Order No. 5337. See generally Docket No. RM2017-3, Northwest Postal Consulting (NWPC) for the Postal Regulatory Commission, Report 2, Comparison of Postal Service Productivity Measurement: Before and After PAEA Enactment, March 27, 2017, at 8-11 (NWPC Report 2).

¹⁶ By way of background, the TFP workpapers filed by the Postal Service contain hardcoded inputs and outputs rather than displaying the formulae used and links to related spreadsheets. Compare, e.g., United States Postal Service, USPS Annual Tables, FY 2019 TFP (Total Factor Productivity), February 27, 2020 with 39 CFR 3050.2(c).

¹⁷ See Docket No. ACR2019, Library Reference USPS-FY19-17, December 27, 2019, *United States Postal Service FY 2019 Annual Report to Congress*, at 34 (*FY 2019 Annual Report*). DPTWH is calculated by multiplying the total possible deliveries by the number of delivery days and dividing that product by total work hours. *FY 2019 Annual Report* at 34. "Starting in FY 2021, the DPTWH metric will no longer be tracked as a corporate indicator." Docket No. ACR2020, Library Reference USPS-FY20-17, December 29, 2020, *United States Postal Service FY 2020 Annual Report to Congress*, at 52 (*FY 2020 Annual Report*).

Commission has expressed concerns with the underlying methodology, finding that DPTWH is less comprehensive than TFP for purposes of measuring productivity because DPTWH isolates workhours (labor) and because DPTWH does not recognize a major workload component: the collection, processing, transporting, and sequencing for delivery of mail.¹⁸ However, it may be possible to develop an alternate methodology that is easier to calculate, understand, and apply than TFP but still comprehensive enough to reflect overall efficiency gains. If the Postal Service proposes that the Commission use a metric other than TFP for a PIM, then it shall file a detailed public explanation of the methodology along with its comments.

Some of the sources of inefficiency (and the potentially resulting lost opportunities to reduce costs and improve service performance) are known in theory but difficult to correct in practice. The following examples are not intended to exhaustively detail these types of issues and instead are intended to promote thoughtful engagement and exploration of the potential challenges and opportunities to enhance the design of the Market Dominant ratemaking system.¹⁹

For instance, while the Postal Service acknowledges that it must better align labor with volume, it has stated that this has been difficult to put into

¹⁸ See Docket No. ACR2010, *Annual Compliance Determination*, March 29, 2011, at 39; see also Docket No. ACR2013, Review of Postal Service FY 2013 Performance Report and FY 2014 Performance Plan, July 7, 2014, at 25.

¹⁹ Extremely detailed discussions of issues related to specific processing (referred to as pinch-points) may be found in a number of other proceedings. See, e.g., Docket No. ACR2015, *Annual Compliance Determination*, March 28, 2016, at 165-180; Docket No. ACR2016, *Annual Compliance Determination*, March 28, 2017, at 165-170; Docket No. ACR2017, *Annual Compliance Determination*, March 29, 2018, at 175-181; Docket No. ACR2018, *Annual Compliance Determination*, April 12, 2019, at 215-222; Docket No. ACR2019, *Annual Compliance Determination*, March 25, 2020, at 161-174 (FY 2019 ACD).

practice.²⁰ During a given day, there are periods of higher workload (peaks) and lower workload (valleys or off-peaks). More staff are needed to handle peaks, whereas, during the valleys, fewer staff are needed. These peaks and valleys do not naturally align with the traditional Postal Service labor structure, which operates in three tours, or 8-hour cycles, per day.²¹ Therefore, Postal Service management must plan carefully to minimize inefficient outcomes, such as insufficient staff during peaks or over-staffing during valleys.²² Additionally, inefficient staffing may lead to mail failing to clear operational checkpoints as expected, which may lead to other negative effects such as the use of overtime hours or additional contract transportation to “catch-up” and/or late delivery.²³

As another example, while the Postal Service acknowledges that it must better encourage preparation of the mail by mailers and/or mail service providers so as to facilitate more efficient handling by the Postal Service, existing practices

²⁰ See, e.g., Docket No. ACR2019, Library Reference USPS-FY19-29, December 27, 2019, PDF file “FY19-29 Service Performance Report.pdf,” at 7, 30.

²¹ Tour 1 is from 11:00 p.m. to 07:00 a.m.; Tour 2 is from 07:00 a.m. to 3:00 p.m.; Tour 3 is from 3:00 p.m. to 11:00 p.m. United States Postal Service, Office of the Inspector General, Report No. 20-144-R20, Transportation Network Optimization and Service Performance, June 5, 2020, at 15, available at: <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-144-R20.pdf> (OIG Rep. No. 20-144-R20).

²² See Docket No. N2010-1, Advisory Opinion on Elimination of Saturday Delivery, March 24, 2011, at 115-126 (Docket No. N2010-1 Advisory Opinion); see also OIG Rep. No. 20-144-R20 at 15-16 (finding insufficient management staff working during Tours 1 and 3); United States Postal Service, Office of the Inspector General, Report No. 19XG013NO000-R20, U.S. Postal Service’s Processing Network Optimization and Service Impacts, October 15, 2018, at 17-18, available at: <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/19XG013NO000-R20.pdf> (OIG Rep. No. 19XG013NO000-R20) (finding employee availability issues contributed to lower productivity, higher costs, and slower service performance).

²³ For example, if inefficient staffing leads to failure to complete origin processing by the applicable target time of day, the affected mail may miss its scheduled transportation. While the Postal Service may try to mitigate the downstream effects by catching-up during transit or destination processing, the Postal Service acknowledges that these types of delays often require extraordinary action to deliver the affected mail within the applicable service standard. FY 2019 ACD at 109 (The Postal Service asserts that if a mailpiece misses its scheduled transportation, then generally that mailpiece will not be delivered within the expected timeframe absent “extraordinary measures at substantial cost, such as extra transportation along with clerk and carrier overtime at the delivery point.”) (quoting Docket No. ACR2018, Responses of the United States Postal Service to Questions 1-9 of Chairman’s Information Request No. 13, February 21, 2019, question 2).

do not maximize this opportunity.²⁴ For instance, certain ways of preparing mail for presentation to the Postal Service are more likely to result in bundle breakage.²⁵ Increased bundle breakage tends to reduce the ability to process the affected mail using machines and increase the likelihood that the affected mail will undergo manual processing instead. Manual processing is less efficient (slower and more costly) than machine processing.²⁶ Increased manual processing may lead to mail failing to clear operational checkpoints as expected, which may lead to other negative effects such as the use of overtime hours to “catch-up” and/or late delivery.²⁷

Generally, the Commission aims to select targets that are outcome-oriented, consistent with the policy goals of the PAEA, objectively measurable and verifiable, readily interpretable, and achievable. Because the Commission is particularly focused on promoting the Postal Service’s longer-term financial viability, the Commission is interested in selecting a metric(s) and target(s) for the PIM that would be consistent with ancillary benefits such as increasing the opportunities for reducing costs and improving service performance. Moreover,

²⁴ See, e.g., United States Postal Service, Office of the Inspector General, Report No. 20-088-R20, Cost Reduction Initiatives for Mail Products, Report Number, August 3, 2020, at 1, available at: <https://www.uspsoig.gov/sites/default/files/document-library-files/2020/20-088-R20.pdf> (OIG Rep. No. 20-008-R20) (finding that the Postal Service personnel did not regularly record mail preparation quality issues, report such issues to Postal Service management for updates to the guidance provided to mailers, or otherwise communicate with mailers concerning correction).

²⁵ See, e.g., OIG Rep. No. 20-088-R20 at 5-9 (detailing that mailpieces that are relatively thinner, shrink-wrapped, bundled using rubber bands or strings, or presented in sacks tend to break more often than mailpieces that are relatively thicker, not shrink-wrapped, bundled using polypropylene (plastic) straps, or presented on pallets).

²⁶ See, e.g., OIG Rep. No. 20-088-R20 at 6 (estimating that for FYs 2018-2019, broken bundles could have increased bundle processing costs by \$96.9 million).

²⁷ For example, if bundle breakage triggers manual processing of the affected mail, the affected mail may miss its applicable time target to clear the next processing operation. See, e.g., Docket No. ACR2019, Library Reference USPS-FY19-29, December 27, 2019, PDF file “FY19-29 Service Performance Report.pdf,” at 19. The Postal Service may try to use overtime hours to speed up manual processing in an effort to deliver the affected mail within the applicable service standard. See, e.g., OIG Rep. No. 20-088-R20 at 8.

the Commission intends to consider potential safeguards to incorporate into the PIM, to ensure that results are adequately safeguarded against manipulation and that selection of a shorter-term target would not perversely incentivize behavior that would be detrimental in the longer-term.

Therefore the Commission raises the following discussion points:

1. How to identify possible refinements to TFP to increase its reliability, accuracy, and representativeness as a measure of efficiency gains within the Postal Service's control?

2. How to identify alternative potential metric(s) other than TFP that could be developed or refined as an accurate, reliable, and representative measure of efficiency gains within the Postal Service's control? Should the Commission consider industry-wide, economy-wide, or similar comparative benchmarks for efficiency? Are there any metrics that the Commission can learn from in adjacent industries, other sectors, or other posts?

3. How to identify potential target(s) for efficiency gains?

4. How to identify potential metric(s) and target(s) related to efficiency gains to promote the longer-term financial viability of the Postal Service, such as by increasing the opportunities for cost reduction and/or improved service performance?

5. How to identify potential safeguards designed to minimize manipulation by the operator and prevent the operator from engaging in behavior that would be detrimental over the longer-term?

D. Service Standards-Based Requirement

Additionally, the Commission intends to explore whether and how to translate the policy goal of the PAEA to maintain high-quality service standards into a specific PIM. This goal is intended to encourage the maintenance of high-

quality service standards established pursuant to 39 U.S.C. 3691, and to hold the Postal Service accountable for consistently achieving those standards. See Order No. 4257 at 261.

The first aspect underlying this goal is referred to as “service standards,” which are the stated days-to-delivery for different types of mail. See *id.* at 250. Service standards are comprised of a delivery day range and business rules.²⁸ With respect to service standards, the Commission is interested in whether introducing direct financial consequences linked to maintenance of the existing service standards would enhance the system, and if so, how to calibrate that mechanism. See Order No. 5763 at 170.

The second aspect underlying this goal implicitly requires consistent achievement of service standards, which is referred to as “service performance.” See *id.* at 296; Order No. 4257 at 262-263. The existing regulatory system has a mechanism to hold the Postal Service accountable for its service performance: the annual compliance review proceeding.²⁹ If commenters have suggestions on how to improve upon that mechanism, they may propose changes in their response to this Order.

An effective price cap system maintains reliable, efficient, and economical service.³⁰ “The Postal Service cannot be permitted to degrade service in order to comply with the revenue constraints associated with the price cap.” Order No. 4257 at 255 (citing Docket No. N2010-1, Advisory Opinion at 8). “A reduction in

²⁸ See *id.* at 251-252. By way of example, there are three separate service standards for First-Class Mail: (1) 1-Day (referred to as “overnight”); (2) 2-Day; and (3) 3-5-Day; business rules determine whether an individual mailpiece will be delivered overnight, in 2 days, or in 3-5 days. See *id.* at 250-251.

²⁹ Order No. 5763 at 296; Order No. 4257 at 264; Docket No. RM2009-11, Order Establishing Final Rules Concerning Periodic Reporting of Service Performance Measurements and Customer Satisfaction, May 25, 2010, at 32 (Order No. 465).

³⁰ Order No. 4257 at 255 (citing Docket No. N2010-1 Advisory Opinion at 7-10).

service must be warranted by declining demand for the service, rather than to ease the obligation of adhering to the price cap.” Docket No. N2010-1, Advisory Opinion at 10. Introducing a direct financial incentive connected to operational efficiency gains and cost reductions may undermine the existing incentives to maintain high-quality service standards.³¹ Accordingly, to give due consideration to a potential need to counterbalance such unintended consequences, the Commission raises the following discussion points:

1. How to identify potential regulatory changes that may be needed to counterbalance any perverse incentive to degrade service standards and/or service performance that may be created by introducing an operational-efficiency based requirement?

2. How to identify the relative advantages of designing a system that creates a direct financial link to changes in service standards?

3. What data and methods could be used to design a system that creates a direct financial link to changes in service standards?

IV. Administrative Actions

The Commission establishes Docket No. RM2021-2 for consideration of the matters discussed in the body of this advance notice of proposed rulemaking.

The Commission will accept comments and reply comments concerning the topics identified in this advance notice of proposed rulemaking. Comments are due April 15, 2021. Reply comments are due May 17, 2021. Pursuant to 39 U.S.C. 505, Richard A. Oliver is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

³¹ See Order No. 5763 at 171 (citing Order No. 5337 at 142, 144; Order No. 4257 at 255); see also 2006 Joskow, *supra* at 8 (observing that regulatory mechanisms focusing on cost reductions exclusively may lead to the operator reducing its service).

The Postal Service shall file the documentation and linked workpapers for its TFP methodology to aid in the evaluation of TFP by February 16, 2021. Materials filed in this docket will be available for review on the Commission's website (<http://www.prc.gov>).

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. See 5 U.S.C. 601, *et seq.* If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. See 5 U.S.C. 605(b). In the context of this rulemaking, the Commission's primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose any regulatory obligation upon any other entity. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

V. Ordering Paragraphs

It is ordered:

1. Docket No. RM2021-2 is established for the purpose of considering amendments to Chapter III of title 39 of the Code of Federal Regulations as discussed in this advance notice of proposed rulemaking.

2. The Postal Service shall file the documentation and linked workpapers for its total factor productivity methodology, in a manner that displays the formulae used and links to related spreadsheets by February 16, 2021.

3. If the Postal Service proposes to use a metric other than total factor productivity for a performance incentive mechanism, then it shall file a detailed public explanation of the methodology along with its comments.

4. Pursuant to 39 U.S.C. 505, Richard A. Oliver shall serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

5. Interested persons may submit comments no later than April 15, 2021.

6. Interested persons may submit reply comments no later than May 17, 2021.

7. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

Editorial note: This document was received at the Office of the Federal Register on January 19, 2021.

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