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POSTAL REGULATORY COMMISSION

39 CFR Part 3030

[Docket No. RM2020-5; Order No. 6801]

RIN 3211-AA27

Market Dominant Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Commission previously proposed amendments to its regulations concerning rate incentives for Market Dominant products. After the period for filing comments in the instant docket closed, in Docket No. R2023-3, the Postal Service proposed, and the Commission subsequently approved, two Market Dominant rate incentives for Calendar Year (CY) 2024. Because the rule proposals in the instant docket may have a bearing on any future proposals to include these rate incentives in the percentage change in rates calculation, the Commission provides the public with an opportunity to comment on the relationship of the rule proposals in the instant docket and the rate incentives approved for CY 2024 in Docket No. R2023-3.

DATES: *Comments are due:* December 4, 2023.

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:

Table of Contents

- I. Background
- II. Invitation to Comment
- III. Administrative Actions

I. Background

Pursuant to 39 U.S.C. 503 and 3622, the Commission proposed amendments to its regulations concerning rate incentives for Market Dominant products appearing in existing 39 CFR part 3030.¹ The proposed amendments would revise the regulation defining “rate of general applicability” for purposes of Market Dominant rate adjustment proceedings to clarify that, to qualify as a rate of general applicability, a rate incentive may not be based on historical mail volumes or prior mailer participation in a rate incentive or promotion. See Order No. 6325 at 1. Further, the Commission proposed to begin enforcing 39 CFR 3030.123(j) and 39 CFR 3030.128(f)(2)(iv) in their entirety.² Enforcing these

¹ Notice of Proposed Rulemaking to Amend Rules Regarding Rate Incentives for Market Dominant Products, November 14, 2022 (Order No. 6325).

² See Order No. 6325 at 1-2, 38; Order Adopting Final Rules Regarding Rate Incentives for Market Dominant Products, May 15, 2020 (Order No. 5510). As discussed further below, although these rules were adopted by Order No. 5510, the Commission subsequently indicated that it did not intend to enforce Order No. 5510 pending reconsideration of it. See Notice of Intent to Reconsider, August 26, 2020 (Order No. 5655).

rules would add an additional criterion for a rate incentive to be eligible for inclusion in a percentage change in rates calculation and would require that more information concerning Market Dominant rate incentives be included in a notice of rate adjustment. See Order No. 6325 at 2.

After the period for filing comments in the instant docket closed, in Docket No. R2023-3, the Postal Service proposed, and the Commission subsequently approved, two Market Dominant rate incentives for Calendar Year (CY) 2024.³ Although the rate incentives were not proposed for inclusion in the percentage change in rates calculation for CY 2024,⁴ the Postal Service stated that it intends to propose including these rate incentives in the percentage change in rates calculation in the future. See Docket No. R2023-3 Notice at 9; Order No. 6713 at 2.

II. Invitation to Comment

Because the First-Class Mail Growth Incentive and the Marketing Mail Growth Incentive were proposed after the timeframes for submitting comments in responses to the rule proposals set forth in Order No. 6325 ended, and because those rule proposals may have a bearing on the Postal Service's ability to include those rate incentives in the percentage change in rates calculation, the Commission provides an opportunity for comment on the relationship between

³ See Docket No. R2023-3, Order on Market Dominant Price Change Creating Two Incentives, September 27, 2023, at 1-2 (Order No. 6713).

⁴ Docket No. R2023-3, United States Postal Service Notice of Market Dominant Price Change Creating Two Incentives, August 11, 2023, at 8-9 (Docket No. R2023-3 Notice).

the pending rule proposals in the instant proceeding and the First-Class Mail Growth Incentive and the Marketing Mail Growth Incentive. The Commission invites comments from the public on the relationship of these rule proposals and rate incentives, including on the questions that the Commission raised in Order No. 6713 about whether the First-Class Mail Growth Incentive and the Marketing Mail Growth Incentive would be permitted to be included in the percentage change in rates calculation under the rule proposals in Order No. 6325.

III. Administrative Actions

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.

Interested persons are invited to provide written comments as discussed in this notice. Comments are due no later than December 4, 2023. All comments received will be available for review on the Commission's website, <http://www.prc.gov>.

Philip T. Abraham will continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

By the Commission.

Erica A. Barker,

Secretary.

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