



## **POSTAL REGULATORY COMMISSION**

**[Docket No. PI2024-2; Order No. 7017]**

### **Public Inquiry on Zone 10 Packages Pursuant to 39 U.S.C. 3642**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is initiating a public inquiry proceeding and appoint a presiding officer to serve as an investigator to explore the appropriate classification of Zone 10 packages pursuant to 39 U.S.C. 3642. This notice informs the public of the filing and takes other administrative steps.

**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**

In Order No. 7016, the Commission stated that it would initiate a public inquiry proceeding and appoint a presiding officer to serve as an investigator to explore the appropriate classification of Zone 10 packages pursuant to 39 U.S.C. 3642 and whether the implementation of Zone 10 prices raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred if the

Postal Service elects to implement the Zone 10 prices.<sup>1</sup> The Commission establishes this docket to facilitate examination of those issues.

## II. Background

On November 22, 2023, the Postal Service filed notice with the Commission of its intent to establish a new Zone 10 for Priority Mail Express, Priority Mail, and USPS Ground Advantage and proposed associated Zone 10 rates.<sup>2</sup> The Postal Service states that the changes will take effect no earlier than July 1, 2024, with a specific date to be determined by the Postal Service in the future. Docket No. CP2024-72 Notice at 1.

Currently, Priority Mail Express, Priority Mail, and USPS Ground Advantage packages are charged prices based on weight and zone. For packages mailed within the United States, a package is assigned Zone 1-8 based on the distance the package must travel to reach its destination. The proposed new Zone 10 and associated prices will apply to (1) packages originating in the Lower 48 States and destined to Alaska, Hawaii, or the U.S. Territories (which include Puerto Rico, the U.S. Virgin Islands, and territories in the Pacific, including Guam and American Samoa); (2) packages originating in Alaska and destined to Hawaii or the U.S. Territories; (3) packages originating in Hawaii or a territory in the Pacific Ocean and destined to Alaska, Puerto Rico, or the U.S. Virgin Islands; and (4) packages originating in Puerto Rico or the U.S. Virgin Islands and destined to Alaska, Hawaii, or a territory in the Pacific Ocean. *Id.* at 2-3. The proposed Zone 10 does not apply to packages that originate in

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<sup>1</sup> Docket No. CP2024-72, Order Approving Price Adjustments and Classification Changes for Domestic Competitive Products, March 22, 2024, at 3, 28, 29-31 (Order No. 7016).

<sup>2</sup> Docket No. CP2024-72, USPS Notice of Changes in Rates and Classifications of General Applicability for Competitive Products, November 22, 2023 (Docket No. CP2024-72 Notice).

Alaska, Hawaii, or the U.S. Territories and are destined to the Lower 48 States.

*Id.* at 4.

To explain the rationale for its proposal, the Postal Service states that the new Zone 10 and associated prices “will better align with the zoning practices of [its] competitors, who currently have separate zones for offshore destinations.”

*Id.* at 3. The Postal Service states that its “competitors charge significantly more for shipments from the Lower 48 states to offshore locations than for shipments in the reverse direction.”<sup>3</sup> The Postal Service also states that its decision to establish Zone 10 is “cost-based in nature” because “[t]he cost of transport to offshore locations is higher on average than it is to transport to non-offshore destinations.” Docket No. CP2024-72 Notice at 3. Specifically, the Postal Service explains that there are more limited transportation options to offshore destinations, and the use of air transportation, the mix of air transportation providers, and the need to use higher cost providers all contribute to higher costs.<sup>4</sup> The Postal Service does not, however, provide specific data and sources demonstrating these cost factors or otherwise demonstrating support for the “cost-based” nature of the new Zone 10 prices and has yet to undertake the effort to disaggregate Zone 10 costs and confirm that its cost-based assumption is supported by its available transportation data. See Docket No. CP2024-72 Response to CHIR No. 2, question 1.

In Order No. 7016, the Commission acknowledged that its role in reviewing proposed Competitive product rate and classification changes was

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<sup>3</sup> Docket No. CP2024-72, USPS Response to Chairman’s Information Request No. 1, With Portions Filed Under Seal, December 20, 2023, question 2.c.

<sup>4</sup> Docket No. CP2024-72, USPS Response to Chairman’s Information Request No. 2, With Portions Filed Under Seal, January 12, 2024, question 1.a. (Docket No. CP2024-72 Response to CHIR No. 2).

limited by law. Order No. 7016 at 1-2, 32-33. Because the proposed rate and classification changes complied with 39 U.S.C. 3633(a), 39 CFR part 3035, and Order Nos. 1062 and 6249,<sup>5</sup> the Commission approved the proposed price and classification changes as consistent with applicable law and found that it had no legal basis to reject the proposed changes. Order No. 7016 at 15-22. However, the Commission also identified numerous concerns with the Postal Service's proposal and approach and urged the Postal Service to reconsider whether it is prudent or necessary to implement its proposal. *Id.* at 2, 22-32. The Commission also identified two areas that were particularly suited to further exploration in a separate public inquiry proceeding: (1) the question of whether Zone 10 packages are appropriately classified as Competitive products pursuant to 39 U.S.C. 3642 and (2) the question of whether the implementation of Zone 10 prices raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred if the Postal Service elects to implement the Zone 10 prices. *Id.* at 28, 30-32.

*Classification of Zone 10 packages.* Postal products are separated into two distinct classifications: Market Dominant and Competitive. 39 U.S.C. 3621, 3631, 3642. Section 3642 of Title 39 governs the addition of products to, removal of products from, or transfer of products (or components of a product) between the Market Dominant and Competitive product lists.<sup>6</sup> The Commission may consider a change to a product's classification upon request of the Postal Service, upon request of users of the mail, or upon its own initiative. 39 U.S.C.

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<sup>5</sup> See 39 U.S.C. 3633(a); 39 CFR part 3035; Docket No. CP2012-2, Order Approving Changes in Rates of General Applicability for Competitive Products, December 21, 2011 (Order No. 1062); Docket Nos. CP2022-22 and CP2022-62, Order Granting in Part the United States Postal Service's Motions for Clarification of Order Nos. 6071 and 6195, August 15, 2022 (Order No. 6249).

<sup>6</sup> 39 U.S.C. 3642. The implementing regulations for this section appear in 39 CFR part 3040.

3642(a). There is nothing to prevent transfer of only part of a product between product lists. 39 U.S.C. 3642(c).

The criteria for assigning a product to either the Market Dominant or Competitive product list are described in 39 U.S.C. 3642(b). Section 3642(b)(1) defines a Market Dominant product as a product over which “the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.” 39 U.S.C. 3642(b)(1). Competitive products are defined as “all other products.” *Id.* Products covered by the postal monopoly are not subject to transfer from the Market Dominant category. 39 U.S.C. 3642(b)(2). Additional considerations in determining the correct classification of a postal product include the availability and nature of private sector competitors, the views of users of the product, and the likely impact on small businesses. 39 U.S.C. 3642(b)(3).

In Docket No. CP2024-72, several commenters raised concerns relevant to an inquiry pursuant to 39 U.S.C. 3642, and the Commission recognized that the concerns raised by commenters may call into question whether the proposed Zone 10 volumes are correctly classified as Competitive. Order No. 7016 at 28-29. As a result, the Commission determined that this issue would be appropriate to consider in a public inquiry proceeding. *Id.* The Commission stated that it intended to appoint a presiding officer to serve as an investigator in the public inquiry proceeding to further explore the appropriate classification of these packages and to provide analysis and recommendations to the Commission on that issue. *Id.*

*Violation of 39 U.S.C. 403(c).* 39 U.S.C. 403(c) prohibits the Postal Service from making “any undue or unreasonable discrimination among users of the mails” “in establishing classifications, rates, and fees.” 39 U.S.C. 403(c). In order to find that undue or unreasonable price discrimination exists in violation of 39 U.S.C. 403(c), the Commission must find that: (1) a mailer has been offered less favorable rates or terms and conditions than one or more other mailers; (2) the mailer is “similarly situated” to the mailer or mailers who have been offered the more favorable rates or terms and conditions; and (3) there is no rational or legitimate basis for the Postal Service to deny the more favorable rates or terms and conditions offered to others.<sup>7</sup> The Commission has the authority to take action to bring the Postal Service into compliance with 39 U.S.C. 403(c) if it finds the Postal Service is not operating in conformance with that provision based on a complaint raising such non-conformance. 39 U.S.C. 3662(a), (c). The Commission has the authority to appoint an officer of the Commission representing the interests of the general public to bring a complaint for violation of 39 U.S.C. 403(c) or any other provision enumerated in 39 U.S.C. 3662(a). 39 U.S.C. 3662(a).

In Order No. 7016, the Commission noted that the Postal Service was not required to justify its Zone 10 rates on a cost basis beyond showing compliance with 39 U.S.C. 3633(a). Order No. 7016 at 30-32. However, the Commission also noted that it previously found costs are a relevant consideration under the 39 U.S.C. 403(c) analysis and that costs may be particularly relevant in the case of Zone 10 because one of the Postal Service’s rationales for its Zone 10

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<sup>7</sup> Docket No. C2020-2, Order Granting the Postal Service’s Motion to Dismiss Complaint with Prejudice, April 28, 2020, at 8 (Order No. 5491) (citing Docket No. C2009-1, Order on Complaint, April 20, 2011, at 28 (Order No. 718)).

proposal is that it is “cost-based in nature.” See *id.* at 30; Order No. 5491 at 8; Docket No. CP2024-72 Notice at 3.

The Commission stated that the Postal Service’s cost-based rationale for its proposal appeared reasonable on its face given the Postal Service’s representations regarding transportation costs to offshore areas; however, it also raised concern that the Postal Service failed to undertake the effort to disaggregate Zone 10 costs and confirm that its assumption regarding higher transportation costs for Zone 10 packages was supported by its available transportation data. Order No. 7016 at 31-32. The Commission directed the Postal Service to file a rulemaking proceeding proposing and supporting the methodological changes necessary to derive separate Zone 10 transportation costs for Priority Mail and USPS Ground Advantage within 90 days of the date of Order No. 7016. *Id.* at 27.

The Commission was concerned that if the Postal Service’s actual cost data differed from the Postal Service’s assumptions, the Postal Service’s cost-based justification for the Zone 10 rates could be invalid and concerns of violation of 39 U.S.C. 403(c) could arise. *Id.* at 30-32. As a result, the Commission stated that it intended to appoint a presiding officer to serve as an investigator to gather information and explore whether the Postal Service would be in violation of 39 U.S.C. 403(c) if the Postal Service elects to implement the new Zone 10 and related prices. *Id.* The Commission also stated that the investigator may also consider whether violation of any other provision enumerated in 39 U.S.C. 3662(a) has occurred. *Id.* at 32. The Commission further stated that after gathering applicable information, the investigator shall issue a public, written report to the Commission as to whether the implementation of Zone 10 raises a material issue of fact concerning whether a

violation of 39 U.S.C. 403(c) or any other provision enumerated in 39 U.S.C. 3662(a) has occurred. *Id.*

### **III. Public Inquiry**

The Commission establishes this proceeding to appoint and direct a presiding officer to serve as an investigator to explore the appropriate classification of Zone 10 packages pursuant to 39 U.S.C. 3642 and whether the implementation of Zone 10 prices raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred if the Postal Service elects to implement the Zone 10 prices. Pursuant to 39 CFR 3010.106, the Commission appoints John Avila to serve as presiding officer in this docket. In that role, the Commission expects the presiding officer to serve an investigatory role similar to the one envisioned by 39 CFR 3022.21 to procure applicable information, examine issues, and report back to the Commission with his analysis and recommendations.<sup>8</sup>

In addition to consideration of 39 U.S.C. 403(c) and 3642, the underlying regulations, Commission precedent, the record of Docket No. CP2024-72, and the disaggregated costs the Postal Service has been directed to file within 90 days, the Commission anticipates that the presiding officer may need additional information from the Postal Service prior to conducting analysis and reaching any conclusions and expects him to issue presiding officer information requests as he deems appropriate to gather such information. 39 CFR 3010.106(c).

Once the presiding officer serving as investigator has sufficient information to analyze and assess whether Zone 10 packages should remain classified as

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<sup>8</sup> See 39 CFR 3022.21. 39 CFR 3022.21 contemplates the appointment of an investigator in the context of procuring information and examining issues before reporting back to the Commission during a complaint proceeding.

Competitive pursuant to 39 U.S.C. 3642, the underlying regulations, and Commission precedent, the presiding officer shall file a public, written report to the Commission in this proceeding detailing his analysis and recommendations to the Commission on that issue. Once the presiding officer serving as investigator has sufficient information to assess whether the implementation of Zone 10 raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred, the presiding officer shall issue a public, written report to the Commission as to whether the implementation of Zone 10 raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred. The investigator may also consider whether violation of any other provision enumerated in 39 U.S.C. 3662(a) has occurred. Upon receipt of these reports, the Commission will consider if further action in this docket or separate proceedings is appropriate.

Materials filed in this proceeding will be available for review on the Commission's website unless the information contained therein is subject to an application for non-public treatment. The Commission's rules on non-public materials (including access to documents filed under seal) appear in 39 CFR part 3011. Additional information may be accessed via the Commission's website at <http://www.prc.gov>.

#### **IV. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket No. PI2024-2 to review issues related to the appropriate classification of Zone 10 packages pursuant to 39 U.S.C. 3642 and whether the implementation of Zone 10 prices raises a material issue of fact concerning whether a violation of 39 U.S.C. 403(c) has occurred if the Postal Service elects to implement the Zone 10 prices.

2. Pursuant to 39 CFR 3010.106, the Commission appoints John Avila to serve as presiding officer in this docket. The presiding officer shall serve in an investigatory role and make filings in this docket as described in the body of this Order.

3. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

**Erica A. Barker,**

*Secretary.*

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