



POSTAL REGULATORY COMMISSION

39 CFR Part 3030

[Docket No. RM2020-5; Order No. 8708]

RIN 3211-AA27

Market Dominant Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to its rules concerning rate incentives for Market Dominant products.

DATES: *Effective:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

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I. Background

In its general Market Dominant rate adjustment filings, the Postal Service routinely proposes to offer rate incentives in the form of promotions that reduce rates by providing discounts, rebates, or credits to participating mailers of certain types of mailpieces. Typically, such promotions are offered for several months during a particular calendar year for certain mailpieces in the First-Class Mail and USPS Marketing Mail classes. If the Commission approves, then the promotion may be offered again, with or without modifications, in the next calendar year.

Each rate incentive offered by the Postal Service is either a rate of general applicability or a rate not of general applicability. A rate incentive of general applicability may be eligible for inclusion in the percentage change in rates calculation (provided that it satisfies all the applicable criteria under the Commission's rules), which will allow for the Postal Service to generate price cap authority for the applicable class of mail. By contrast, a rate incentive not of general applicability has been ineligible for inclusion in the percentage change in rates calculation, unless mail volumes sent under it are included as though they paid the appropriate rates of general applicability.

The Commission previously adopted regulations concerning rate incentives for Market Dominant products.¹ However, in connection with an appeal, the Commission stated that it would reconsider Order No. 5510 and that it "does not intend to enforce Order No. 5510 during the reconsideration period."² In Order No. 6325, the Commission proposed modifying its rules and sought comments on its proposal.³ Subsequently, the Commission sought supplemental comments.⁴ Having considered the comments that it received, the Commission proposed further changes to its rules in Order No. 7559.⁵

II. Basis for Rule Change

¹ Docket No. RM2020-5, Order Adopting Final Rules Regarding Rate Incentives for Market Dominant Products, May 15, 2020 (Order No. 5510).

² Docket No. RM2020-5, Notice of Intent to Reconsider, August 26, 2020, at 2 (Order No. 5655); see *U.S. Postal Serv. v. Postal Reg. Comm'n*, Joint Motion for Voluntary Dismissal and Vacatur, No. 20-1208 (D.C. Cir. Sept. 11, 2020).

³ Docket No. RM2020-5, Notice of Proposed Rulemaking to Amend Rules Regarding Rate Incentives for Market Dominant Products, November 14, 2022 (Order No. 6325).

⁴ Docket No. RM2020-5, Supplemental Notice of Proposed Rulemaking to Amend Rules Regarding Rate Incentives for Market Dominant Products, November 17, 2023 (Order No. 6801).

⁵ Docket No. RM2020-5, Second Supplemental Notice of Proposed Rulemaking to Amend Rules Regarding Rate Incentives for Market Dominant Products, September 20, 2024 (Order No. 7559).

The Commission modifies its rules by revising the criteria that a rate incentive must satisfy to be included in the percentage change in rates calculation; revises the definition of “rate of general applicability;” and revises filing and reporting requirements.

First, the Commission creates a mechanism allowing certain rate incentives that are not rates of general applicability to be included in the percentage change in rates calculation. Second, the Commission removes the not-enforced requirement that a rate incentive must be made available to all mailers equally on the same terms and conditions to be included in the percentage change in rates calculation. Third, the Commission revises the definition of “rate of general applicability” in § 3030.101. This revision clarifies a potential ambiguity. The Commission also revises the definition of “rate of general applicability” as initially proposed in Order No. 6325 to clarify that to qualify as a rate of general applicability, a rate incentive cannot have eligibility criteria based on historical mail volumes or prior participation in a rate incentive or promotion. Fourth, the Commission revises filing requirements to ensure that the Postal Service provides sufficient information at the outset of a Market Dominant rate adjustment proceeding. Fifth, the Commission adds a provision authorizing it to require the submission of information to ensure that rate incentives included in the percentage change in rates calculation comply with applicable requirements.

The mechanism allowing certain rate incentives that are not rates of general applicability to be included in the percentage change in rates calculation allows a rate incentive for which a mailer’s eligibility depends on the mailer’s increasing its volumes of a product (or multiple products) to be included in the percentage change in rates calculation. The Commission creates this

mechanism to encourage the Postal Service to develop and offer such rate incentives, with the goal of combatting volume decline.

The Commission also removes the not-enforced requirement that a rate incentive must be made available to all mailers equally on the same terms and conditions to be included in the percentage change in rates calculation. The Commission removes this requirement because fairness concerns can be addressed through other means and because this requirement has the potential to cause confusion.

The Commission revises the definition of “rate of general applicability” in § 3030.101 by adding the word “only” to the sentence addressing rates benefiting a single mailer so that the sentence reads as follows: “A rate is not a rate of general applicability if it benefits only a single mailer.” This change removes a potential ambiguity in the sentence and ensures that the sentence reflects the Commission’s intent in adding the sentence to the definition.

The Commission also adopts the changes to the definition of “rate of general applicability” that it proposed in Order No. 6325. See Order No. 6325 at 26-34. These changes to the definition of “rate of general applicability” in § 3030.101 clarify what rate incentives may qualify for inclusion in the percentage change in rates calculation as rates of general applicability. Under the Commission’s existing rules “[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[.]” 39 CFR 3030.101(j). As initially proposed in Order No. 6325, the changes add an additional sentence to clarify that a rate incentive is not a rate of general applicability if eligibility for the rate is dependent wholly or partially on the volume of mail sent by a mailer in a past year or years

or on the participation by a mailer in a rate incentive or promotion in a past year or years.

The Commission modifies its rules for the technical documentation required to support proposed rate incentives. These changes implement changes conforming to the Commission's changes to its rules for including rate incentives in the percentage change in rates calculation. Thus, under the revision, the Commission's rules require a statement describing the purpose of the rate incentive. Similarly, and to conform with the change to the definition of "rate of general applicability," under the revision, the rule requires a statement affirming that a rate incentive proposed to be included in the percentage change in rate calculation will not benefit only a single mailer.

In addition, the Commission requires each request to include a rate incentive in the percentage change in rates calculation to include an estimate of the effect of the rate incentive on mailers in the affected class that do not participate in the rate incentive, as well as all information and calculations relied upon to develop such estimate. The Commission makes this change for transparency. This change ensures that the public is provided notice of the estimated effect of the proposed rate incentive on non-participating mailers in the affected class. The Commission requires the information and calculations relied upon to develop the estimate to ensure that it understands the basis for the estimate and to provide transparency to the public and affected stakeholders.

The Commission also adds a provision authorizing it to require the submission of information to ensure that rate incentives included in the percentage change in rates calculation comply with applicable requirements. In the Commission's experience, reporting requirements are important to ensure

that the Commission understands how rate incentives operate in practice. The Commission codifies its authority to impose such reporting requirements.

III. Final Rules

List of Subjects in 39 CFR Part 3030

Administrative practice and procedure, Fees, Postal Service.

For the reasons stated in the preamble, the Commission amends 39 CFR Part 3030 as follows:

PART 3030—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

1. The authority citation for part 3030 continues to read as follows:

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

2. Amend § 3030.101 by:

- a. Redesignating paragraphs (j) through (l) as paragraphs (k) through (m);
- b. Adding paragraph (j); and
- c. Revising newly redesignated paragraph (k).

The addition and revisions read as follows:

§ 3030.101 Definitions.

* * * * *

(j) *Rate incentive comparison period* is a period of time in the fiscal year or calendar year immediately before a rate incentive that is not a rate of general applicability is offered. A rate incentive comparison period must be not less than 3 months in length and not more than 12 months in length. Except for a rate incentive that is not a rate of general applicability that has a term of 1 calendar

year, the rate incentive comparison period is the same period of months and days in the fiscal year or calendar year immediately before the rate incentive is offered as the term of the rate incentive. For any rate incentive that is not a rate of general applicability that has a term of 1 calendar year, the rate incentive comparison period shall be either: the calendar year that is most recently ended before the rate incentive is offered; or the fiscal year that is most recently ended before the rate incentive is offered.

(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 incentive is not a rate of general applicability if eligibility for the rate is wholly or partially dependent on the volume of mail sent by a mailer in a past year or years or on the participation by a mailer in a rate incentive or promotion in a past year or years. A rate is not a rate of general applicability if it benefits only 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.

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3. Amend § 3030.123 by revising paragraph (j) to read as follows:

§ 3030.123 Supporting technical documentation.

* * * * *

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

(1) Whether the rate incentive is being treated under § 3030.128(f)(2) or under § 3030.128(f)(1) and (g);

(2) If the Postal Service seeks to include the rate incentive in the calculation of the percentage change in rates under § 3030.128(f)(2):

(i) The terms and conditions of the rate incentive;

(ii) The factors that determine eligibility for the rate incentive;

(iii) A statement that affirms that the rate incentive will not benefit only a single mailer;

(iv) A statement that affirms that the rate incentive is not only available upon the written agreement of both the Postal Service and a mailer, or group of mailers, or a foreign postal operator;

(v) A statement describing the purpose of the rate incentive; and

(vi) An estimate of the effect of the rate incentive on mailers in the affected class that do not participate in the rate incentive and all information and calculations relied upon to develop such estimate.

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4. Amend § 3030.128 by:

a. Revising paragraph (f)(2);

b. Adding new paragraph (f)(3); and

c. Revising paragraph (g)(1).

The addition and revisions read as follows:

§ 3030.128 Calculation of percentage change in rates.

* * * * *

(f) * * *

(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 either:

(A) A rate of general applicability; or

(B) A rate not of general applicability that satisfies the following requirements:

(1) The rate incentive is not only available upon the written agreement of both the Postal Service and a mailer, or group of mailers, or a foreign postal operator;

(2) The rate incentive is applicable to all mail meeting standards established by the Mail Classification Schedule, the Domestic Mail Manual, and the International Mail Manual;

(3) The rate incentive does not benefit only a single mailer;

(4) The rate incentive is designed to increase volume; and

(5) A mailer's eligibility for the rate incentive depends on the mailer's sending, in a specified period of time, a volume of mail of specified products that exceeds a specified threshold volume of mail, provided that such threshold volume of mail is not less than the volume of the specified products that the mailer sent in the rate incentive comparison period.

(3) The Commission may require submission of such information as it deems necessary to ensure that rate incentives included in the percentage change in rates calculation comply with the requirements of this section.

(g) ***

(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, except as provided in paragraph (f)(2) of this section. 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.

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By the Commission

Erica A. Barker,

Secretary.

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