



## **POSTAL REGULATORY COMMISSION**

### **39 CFR Part 3010**

**[Docket No. RM2014-3; Order No. 1879]**

### **Price Cap Rules for Market Dominant Price Adjustments**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** The Commission is proposing rules addressing the price cap for market dominant price adjustments as part of an ongoing review. This stage of the review concerns rate reductions, rate incentives, and de minimis rate increases. The Commission invites public comment on the proposals.

**DATES:** *Comments are due:* [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. *Reply comments are due:* [INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Brian Corcoran, Acting General Counsel, 202-789-6820.

### **SUPPLEMENTARY INFORMATION:**

#### **Regulatory History**

**72 FR 5230, February 5, 2007**

**72 FR 29284, May 25, 2007**

**72 FR 33261, June 15, 2007**

**72 FR 63622, November 9, 2007**

**74 FR 49326, September 28, 2009**

**78 FR 22490, April 16, 2013**

**78 FR 52694, August 26, 2013**

**78 FR 67951, November 8, 2013**

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### **I. Introduction**

With this Notice of Proposed Rulemaking, the Commission is continuing a review of its rules in 39 CFR part 3010 and requesting comments and suggestions regarding the treatment of rate reductions, rate incentives, and de minimis rate increases under part 3010.

The purposes of this rulemaking are to clarify and standardize the Commission's previous treatment of rate reductions and rate incentives, to establish a type of de minimis rate adjustment that would allow the Postal Service to make extremely minor increases to rates without requiring the Postal Service to calculate the annual limitation or generate unused rate adjustment authority, and to improve other aspects of the process of adjusting rates for

market dominant products. The proposed rules are intended to provide more certainty for the Postal Service and the mailing community as they make decisions that rely upon the Postal Service's authority to adjust rates for market dominant products under 39 U.S.C. 3622(d) and part 3010.

## **II. Background**

In Docket No. RM2013-2, the Commission began the process of reviewing its rules in 39 CFR part 3010, with the intent of clarifying and improving those rules.<sup>1</sup> The Commission adopted final rules in that docket that, among other minor changes, reorganized part 3010; added definitions; clarified the information required to be submitted with proposed workshare discounts; clarified that the rules require that a 12-month period be used to calculate the annual limitation when notices of rate adjustment are more than 12 months apart; clarified that the Postal Service may not rely on anticipated changes in mailer behavior to make adjustments to billing determinants; and revised the rule establishing the maximum size of unused rate adjustment authority for rate changes to align with statutory language.<sup>2</sup>

Order No. 1786 noted that the Commission's proposed treatment of promotional rates and incentive programs generated significant disagreement

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<sup>1</sup> Docket No. RM2013-2, Notice of Proposed Rulemaking Requesting Comments on Proposed Commission Rules for Determining and Applying the Maximum Amount of Rate Adjustments, March 22, 2013, at 1-2 (Order No. 1678).

<sup>2</sup> Docket No. RM2013-2, Order Adopting Final Rules for Determining and Applying the Maximum Amount of Rate Adjustments, July 23, 2013 (Order No. 1786).

among commenters. *Id.* at 28. The Commission stated its intent to establish a separate docket for the consideration of this issue. *Id.* at 29, 33.

### **III. Proposed Rules**

The proposed rules included in this Notice of Proposed Rulemaking contain: (1) a separate process for rate adjustments that consist solely of rate decreases, designated as a “Type 1–C rate adjustment”; (2) revisions to the rules for the treatment of rate incentives for rates of general applicability (Type 1–A and Type 1–B rate adjustments); (3) revisions to clarify the treatment of rate incentives that are not rates of general applicability; (4) revisions to clarify the treatment of deleted rate cells; and (5) a separate process for de minimis rate increases.

#### *A. Type 1–C Rate Adjustments*

The Commission proposes allowing the Postal Service to request certain rate reductions without the calculation of the annual limitation and allowing the Postal Service to recoup associated unused rate adjustment authority by using it in future rate adjustments. These proposed rules apply to notices that only contain rate decreases. If the Postal Service proposes a rate increase in a notice of rate adjustment, the adjustment must still be filed as a Type 1–A or Type 1–B rate adjustment. Proposed §§ 3010.3(b)(2), 3010.6, 3010.20(e), 3010.23(b)(2), and 3010.27 are designed to facilitate mid-year rate reductions by allowing the

Postal Service to recoup unused rate adjustment authority from those rate reductions.

Under the Commission's existing rules, even for a rate decrease, the Postal Service must file a Type 1–A rate adjustment to create unused rate authority.<sup>3</sup> In the past, when the Postal Service has filed rate reductions that are not part of an omnibus rate adjustment, the Postal Service has elected to not utilize the existing rules to generate unused rate adjustment authority.

However, recently, the Postal Service has sought to use rate reductions that are not part of an omnibus rate adjustment to generate unused rate adjustment authority. In its Full-Service Intelligent Mail Barcode Technology Credit Promotion (Technology Credit Promotion) request, the Postal Service proposed to create unused rate adjustment authority that it could use in its next omnibus notice of rate adjustment.<sup>4</sup> Specifically, the Postal Service proposed to use the unused rate adjustment authority generated as a result of the Technology Credit Promotion before it used any of the unused rate adjustment authority generated during the previous 5 years. Technology Credit Notice at 5. The Commission rejected this proposal, on the basis that it violated the first-in, first-out rule established under 39 U.S.C. 3622(d)(2)(C)(iii)(III). Order No. 1743

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<sup>3</sup> For example, if the annual limitation was 2 percent, and the Postal Service requested a rate reduction that resulted in a 0.5 percent rate decrease, unused rate adjustment authority after that adjustment would equal 2.5 percent (2% - (-0.5%)).

<sup>4</sup> Docket No. R2013-6, United States Postal Service Notice of Market-Dominant Price Adjustment (Technology Credit Promotion), April 16, 2013 (Technology Credit Notice); Docket No. R2013-6, Order Approving Technology Credit Promotion, June 10, 2013 (Order No. 1743).

at 12. The proposed rules would allow the Postal Service to create unused rate adjustment authority in a manner consistent with 39 U.S.C. 3622(d). Under the proposed rules, the Postal Service will have the option to either forgo unused rate adjustment authority resulting from rate decreases, as it has chosen to do in the past, or create additional unused rate adjustment authority pursuant to proposed § 3010.23(b)(2).<sup>5</sup>

Rate reductions that occur outside annual omnibus rate adjustments can provide additional pricing flexibility for the Postal Service and lower rates for mailers. The Commission does not wish to unnecessarily limit that flexibility. In order to facilitate rate reductions that occur outside annual omnibus rate adjustments, the Commission believes the simplest path is to allow the Postal Service to amend its most recent omnibus rate adjustment to incorporate the effects of the rate reduction. This will allow the Postal Service to recoup unused rate adjustment authority without calculating the annual limitation or violating 39 U.S.C. 3622(d)(2)(C).

Proposed new rule 3010.27 promotes simplicity. It takes into consideration the fact that a proposed rate reduction would be in effect during the same period as the rates proposed in the most recent omnibus annual Type 1–A or Type 1-B rate adjustment. Instead of requiring new billing determinants, the

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<sup>5</sup> See, e.g., Docket Nos. R2011-1 (Reply Rides Free and Saturation Volume Discount); R2011-5 (Mobile Barcode Promotion); and R2012-9 (Mobile Barcode Promotion).

Commission believes it is reasonable to require the Postal Service to amend the most recent percentage change in rates calculations to include the proposed rate reductions. However, if necessary, the Postal Service may still reasonably adjust its billing determinants pursuant to proposed §§ 3010.23(d) or (e), as applicable.

If the Postal Service chooses to file a Type 1–C rate adjustment and to generate unused rate adjustment authority as a result of that adjustment, it may add any associated unused rate adjustment authority to the unused rate adjustment authority for the most recent Type 1–A or 1–B rate adjustment.

Below is an example.

Example:

**Docket No. R201X-1: Type 1–A Rate Adjustment**

Date of Notice of Rate Adjustment:	January 1, 201X
Annual Limitation:	3.000 percent
Percentage Change in Rates for the Class:	2.500 percent
Generated Unused Rate Adjustment Authority:	0.500 percent

**Docket No. R201X-2: Type 1–C Rate Adjustment**

Date of Notice of Rate Adjustment:	July 1, 201X
Annual Limitation:	N/A
Additional Generated Unused Rate Adjustment Authority:	2.250 percent
Amended Percentage Change in Rates for the Class:	0.250 percent
Amended Unused Rate Adjustment Authority Generated in Docket No. R201X-1:	0.750 percent

In this example, the Postal Service files Docket No. R201X-2 6 months after a Type 1–A rate adjustment (Docket No. R201X-1). The Type 1–C rate adjustment only includes rate decreases, and results in a percentage change in rates for the class that is 0.250 percent lower than the preceding Type 1–A rate adjustment. This translates into an increase of the unused rate adjustment authority generated in R201X-1 from 0.500 percent to 0.750 percent.

Proposed § 3010.23(b)(2) establishes the procedures for calculating the percentage change in rates for Type 1–C rate adjustments. The procedures require the Postal Service to amend the most recent percentage change in rates calculations for a class by including the proposed rate reductions in those workpapers. For example, if in July 2013, the Postal Service were to request a

decrease in the rate for Certified Mail from \$3.10 to \$3.00, the Docket No. R2013-1 Special Services rate cap calculations contained in PRC-LR-R2013-1/5 would be updated to reflect the “new price” of \$3.00 for Certified Mail. When this change is made, it changes the overall percentage change in rates for all of Special Services as well as the unused rate adjustment authority generated.

In order to isolate the additional unused rate adjustment authority generated from the Type 1–C rate adjustment, proposed § 3010.27(a) requires two steps. First, the difference between the most recent Type 1–A or Type 1–B annual limitation and the percentage change in rates calculated pursuant to § 3010.23(b)(2) is calculated. Second, the unused rate adjustment authority generated in the most recent Type 1–A or Type 1–B rate adjustment is subtracted from that result.<sup>6</sup>

The unused rate adjustment authority generated pursuant to proposed § 3010.27(a) is then added to the unused rate adjustment authority generated in the most recent Type 1–A or Type 1–B rate adjustment as described in proposed § 3010.27(c). Proposed §§ 3010.27(b) and 3010.27(d) ensure that unused rate adjustment authority generated under Type 1–C procedures remains consistent with 39 U.S.C. 3622(d)(2)(C).

*B. Treatment of Rate Incentives That Are Rates of General Applicability*

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<sup>6</sup> If the most recent rate adjustment was a Type 1–B rate adjustment, or no unused rate adjustment authority was generated in the Type 1–A rate adjustment, the unused rate adjustment authority for purposes of these calculations is zero.

In Docket No. RM2012-3, the Commission proposed rules regarding treatment of rate incentives in its percentage change in rates calculations. Order No. 1678, Attachment at 9, § 3010.23(e) and (f). Many interested parties filed comments expressing concern with the proposal as presented, and urged the exclusion of rate incentives from the calculation of percentage change in rates for rate adjustments.<sup>7</sup> Ultimately, the Commission chose to not include rules regarding rate incentives in its final rules. Order No. 1786 at 29, 33. The Commission now proposes to include the language proposed in Order No. 1678 for treatment of certain types of rate incentives in percentage change in rates calculations, and to specify the types of rate incentives that can be included and the types of rate incentives that must be excluded.

Proposed § 3010.23(a)(3) defines a “rate incentive” as 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. Proposed § 3010.23(e) establishes the procedures associated with rate incentives of general applicability.<sup>8</sup> The proposed procedures first give the

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<sup>7</sup> See Docket No. RM2013-2, Comments of the Association for Postal Commerce, May 16, 2013, at 2-4; Docket No. RM2013-2, Comments of the National Association of Presort Mailers, May 16, 2013, at 4; Docket No. RM2013-2, Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. Reply Comments on Notice of Proposed Rulemaking, May 31, 2013, at 2-3; Docket No. RM2013-2, Reply Comments of the National Postal Policy Council, May 31, 2013, at 6.

<sup>8</sup> The incentives discussed in this paragraph apply to discounts or rate reductions. If the Postal Service creates an incentive in the form of a surcharge, this would be a rate increase and thus be subject to the rules governing rate increases.

Postal Service the option to include rate incentives that satisfy certain criteria in its percentage change in rates calculations. If the Postal Service chooses not to include the rate incentives in its percentage change in rates calculations, it will not receive unused rate adjustment authority that it can use to increase other rates within the class.

The Postal Service also may choose not to receive unused rate adjustment authority for a rate incentive of general applicability when it is first offered, but rather to receive rate adjustment authority in a subsequent rate adjustment proceeding pursuant to proposed § 3010.23(a)(1)(iii). The proposed rule allows the Postal Service to recover rate adjustment authority from the previously excluded rate incentive over the most recent 12-month period.<sup>9</sup> This is accomplished by assuming the current rate<sup>10</sup> of the rate incentive is the

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<sup>9</sup> The proposed rule does not allow the Postal Service to recover rate adjustment authority from the rate incentive over multiple 12-month periods. For example, in Year 1, the Postal Service begins offering a rate incentive and chooses to exclude the rate incentive from its percentage change in rates calculations. In Year 3 of the rate incentive, the Postal Service decides to begin including the rate incentive in its percentage change in rates calculations. In the Year 3 percentage change in rates calculations the Postal Service may only use the billing determinants from the most recent 12-month period, not billing determinants spanning the previous 3 years. See rule 3010.23(d). In addition, if the rate incentive in Year 1 was a \$0.10 discount and in Year 3 the rate incentive was a \$0.05 discount, the Postal Service can only recover rate adjustment authority from the current rate incentive (\$0.05) in the Year 3 percentage change in rates calculations. See proposed § 3010.23(a)(1).

<sup>10</sup> In Order No. 43, there was confusion regarding the “current rate” for seasonal and temporary rates. See Order No. 43, Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, at 51. The proposed definition of current rate specifies that current rates are the rates in effect at the time of the Postal Service’s notice of rate adjustment. For seasonal and temporary rates, the current rate for seasonal or temporary rates is the most recently available rate for the temporary or seasonal rate. This ensures that the seasonal or temporary rates are properly accounted for in the

undiscounted rate rather than the discounted rate in effect at the time of the Postal Service's notice of rate adjustment. For example, if a rate incentive provided a 5-cent discount on a rate that was normally 25 cents and the Postal Service elected to exclude the rate incentive from the calculation of the percentage change in rates in the most recent rate case, the Postal Service may choose in a subsequent rate case to begin including the discounted rate in its calculation of the percentage change in rates by using 25 cents (the full undiscounted rate) as the current rate and 20 cents (or the proposed discounted rate) as the planned rate.

Proposed § 3010.23(e)(2) provides criteria that must be met in order for rate incentives to be included in its percentage change in rates calculations. The first two criteria require that a rate incentive must be in the form of a discount or be easily translated into a discount and sufficient billing determinants<sup>11</sup> must be available. These criteria ensure that rate incentives can be incorporated into the percentage change in rates calculations.<sup>12</sup>

The third criterion requires that a rate incentive must be a rate of general applicability. The Commission proposes defining a "rate of general applicability"

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percentage change in rates calculations. The second exception is for rate incentives that were previously excluded from the percentage change in rates calculations.

<sup>11</sup> The proposed rule requires that "sufficient billing determinants" be available, which requires that adequate volume data are available for each rate cell of the rate incentive so the rate incentive can be accurately included in the percentage change in rates calculations for the class.

<sup>12</sup> Adjustments may be made to billing determinants if the adjustments are based on known mail characteristics or historical volume data (as opposed to forecasts of mailer behavior).

as “a rate applicable to all mail meeting standards established by the Mail Classification Schedule and the Domestic Mail Manual.” Proposed § 3010.1(g) goes on to explain that eligibility for a rate of general applicability cannot be dependent on factors other than the characteristics of the mail to which the rate applies and that a rate of general applicability cannot be available upon written agreement to only one mailer or a group of mailers. Limiting the inclusion of rate incentives to those that are rates of general applicability ensures that non-participating mailers are not harmed either by being excluded from the discount or by above-average rate increases levied to fund discounts for other mailers.

This proposed treatment of rate incentives is consistent with the treatment of rate incentives in Docket No. R2013-1. In Docket No. R2013-1, the Postal Service proposed including rate incentives in its percentage change in rate calculations. Those rate incentives were rates of general applicability.<sup>13</sup> Specifically, Mobile Coupon/Click-to-Call, Emerging Technologies, Mobile Buy-it-Now, and Earned Value Reply Mail Promotions were included in the percentage change in rates calculations for First-Class Mail and Standard Mail. These rate incentives were all in the form of discounts, used historical billing determinants, and met the proposed definition of rates of general applicability.

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<sup>13</sup> See Docket No. R2013-1, United States Postal Service Notice of Market-Dominant Price Adjustment, October 11, 2012, at 9.

The current price cap rules accord the Postal Service the flexibility to apply rate changes in varying degrees to rates of general applicability. If a rate incentive is a rate of general applicability, then it follows that the Postal Service's pricing flexibility should extend to these rates.

*C. Treatment of Rate Incentives That Are Not Rates of General Applicability*

The Postal Service has, in the past, proposed rate incentives that would not be considered rates of general applicability under the proposed rules.<sup>14</sup> Notable among these is the Postal Service's proposed Technology Credit Promotion, which was the subject of several comments in Docket No. RM2013-2.<sup>15</sup>

Previously, when the Postal Service has proposed rate incentives that are not rates of general applicability, the Commission has provided the Postal Service with the option to treat the rate incentives like negotiated service agreements, pursuant to the procedures described in 39 CFR 3010.24.<sup>16</sup> In Docket No. RM2013-2, the Public Representative argued that certain rate

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<sup>14</sup> See Docket No. R2011-5, Order Approving Market Dominant Price Adjustment, May 17, 2011 (Order No. 731); Docket No. R2012-6, Order Approving Market Dominant Price Adjustment, March 26, 2012 (Order No. 1296); Docket No. R2009-4, Order Approving Price Adjustment for Standard Mail High Density Flats, July 1, 2009, at 6-9 (Order No. 236); Order No. 1743 at 16-17.

<sup>15</sup> See, e.g., Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on Notice of Proposed Rulemaking, May 16, 2013, at 5; Comments of the Association for Postal Commerce, May 16, 2013, at 2; Comments of the National Association of Presort Mailers, May 16, 2013, at 4 n.1.

<sup>16</sup> See Order No. 731; Order No. 1296; Order No. 236; and Order No. 1743. See also Order No. 1807, Docket No. C2009-1R, Order on Reconsideration and Clarification, August 13, 2013, at 9-10.

incentives, like summer sales, were similar to negotiated service agreements in that they are designed to generate volume.<sup>17</sup> For that reason, the Public Representative argued that some rate incentives should be excluded from the calculation of the percentage change in rates under § 3010.23. *Id.* Other commenters in that docket focused on the effects of rate incentives like the Technology Credit Promotion on non-participating mailers, arguing that it would be inequitable or unjust to require non-participating mailers to pay higher rates to recover revenue lost to temporary promotional rates.<sup>18</sup>

Proposed § 3010.24 would formalize the Commission's past treatment of rate incentives that are not rates of general applicability by requiring that they be treated like negotiated service agreements for purposes of calculating the percentage change in rates. Under the proposed rules, a rate incentive would not be considered a rate of general applicability if it did not fall within the definition of "rate of general applicability" in proposed § 3010.1(g). For example, a rate incentive that was only available to a single mailer would not be considered a rate of general applicability. Nor would a rate incentive that is dependent on a factor other than the characteristics of the mail to which the rate applies be considered a rate of general applicability.

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<sup>17</sup> Docket No. RM2013-2, Public Representative Reply Comments, May 31, 2013, at 4.

<sup>18</sup> Docket No. RM2013-2, Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments on Notice of Proposed Rulemaking, May 16, 2013, at 5; Docket No. RM2013-2, Comments of Pitney Bowes Inc., May 16, 2013, at 3; Docket No. RM2013-2, Reply Comments of the National Postal Policy Council, May 31, 2013, at 5.

Under the proposed rules, if the Postal Service files a notice of rate adjustment that contains rate incentives that are not rates of general applicability, the rate incentives that are not rates of general applicability will be subject to proposed § 3010.24. Volumes sent at the rate incentive rate will be included in the calculation of percentage change in rates as if those volumes had paid the rate of general applicability. This treatment will protect mailers who are ineligible to participate in the rate incentive from funding reduced rates which only benefit eligible mailers.

The proposed rules concerning rate incentives that are not rates of general applicability address many of the concerns about the Technology Credit Promotion raised in Docket No. RM2013-2. The Technology Credit Promotion would have been available to mailers from June 1, 2013 to May 31, 2014, but eligibility for the credit would have been based on the mailer's volume from the already concluded fiscal year 2012.<sup>19</sup> Proposed § 3010.1(g) provides that 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." The volume of mail sent by a mailer in a previous year is not a characteristic of the mail that would be eligible for the Technology Credit Promotion. Therefore, the Technology Credit Promotion would not have qualified as a rate incentive that is

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<sup>19</sup> Docket No. R2013-6, United States Postal Service Notice of Market-Dominant Price Adjustment (Technology Credit Promotion), April 16, 2013, at 1.

a rate of general applicability. Under proposed § 3010.24, the Technology Credit Promotion would be treated in the same manner as a negotiated service agreement. As a result, the volumes sent under the Technology Credit Promotion would be included in the calculation of percentage change in rates as if they were sent at the undiscounted rate.

*D. Adjustment for Deletion of Rate Cell*

Proposed § 3010.23(d)(4) specifies the procedure for the deletion of rate cells. The proposed rule specifies that when the Postal Service deletes a rate cell, and there is not a reasonable substitute available, the Postal Service should adjust the billing determinants for that rate cell to zero. The proposed rule ensures that mailers within a class are not harmed by large increases when the Postal Service deletes a rate cell.

Docket No. R2013-1 was the first rate adjustment after the Commission approved the transfer of Parcel Post to the competitive product list.<sup>20</sup> In the Package Services workpapers, the Postal Service correctly removed the billing determinants associated with the transferred pieces. The Commission proposes to codify that treatment for future rate adjustments.

*E. De Minimis Rate Increases*

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<sup>20</sup> Docket No. R2013-1, United States Postal Service Notice of Market-Dominant Price Adjustment, October 11, 2012, at 29.

In 2009, the Commission amended §§ 3010.21(a) and 3010.22(b) to provide that the annual limitation would be “rounded to three decimal places.”<sup>21</sup> Before that change, the Commission’s calculations were limited by available data to one decimal place. Order No. 303 at 1; Order No. 246 at 2. The change to three decimal places was motivated by two considerations. First, the Commission expressed a desire to allow the Postal Service to exercise a greater degree of flexibility by making more precise rate adjustments. Order No. 246 at 2. Second, the Bureau of Labor Statistics began reporting the CPI-U index to three digits in 2007, allowing the Commission to calculate the percentage change in rates with a greater degree of precision. *Id.*

In Docket No. R2011-1, the Postal Service proposed a change to the Move Update Assessment threshold.<sup>22</sup> This change resulted in a percentage change in rates for First-Class Mail and Standard Mail of 0.0004 percent. *Id.* The Commission found that under its rules at that time, the Postal Service would have been required to calculate an annual limitation and generate unused rate adjustment authority. *Id.*

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<sup>21</sup> Docket No. RM2009-8, Order Amending the Cap Calculation in the System of Ratemaking, September 22, 2009 (Order No. 303); Postal Rates, 74 FR 49326, September 28, 2009. See also Docket No. RM2009-8, Notice of Proposed Rulemaking to Amend the Cap Calculation in the System of Ratemaking, July 10, 2009 (Order No. 246); Postal Rates, 74 FR 36132, July 22, 2009.

<sup>22</sup> Docket No. R2011-1, Order Approving Market Dominant Classification and Price Changes, and Applying Price Cap Rules, December 10, 2010, at 9 (Order No. 606).

Upon re-evaluation, the Commission has found no sound basis for requiring the Postal Service to immediately calculate the annual limitation and bank unused rate adjustment authority when it makes a rate adjustment that results in a percentage increase in rates that is less than 0.001 percent. As the Commission recognized in Order No. 246, the Postal Service is entitled to exercise its pricing flexibility with a high degree of precision. See Order No. 246 at 2. Requiring the Postal Service to recalculate the annual limitation as a result of a rate increase that is so small that it would not impact the percentage change in rates for a class limits the Postal Service's ability to make minor, reasonable adjustments to its rates.

Allowing the Postal Service to exercise pricing flexibility is consistent with 39 U.S.C. 3622(b)(4). However, this flexibility should not become a means to circumvent the annual limitation. The proposed § 3010.30 would allow the Postal Service to make very small rate increases without immediately calculating the annual limitation and banking unused rate adjustment authority.<sup>23</sup> Under the proposed rules, if the Postal Service elects not to immediately bank unused rate adjustment authority as a result of a small rate increase, the effect of the rate increase will have to be accounted for in the next Type 1-A or Type 1-B notice of rate adjustment. Thus, the Postal Service will continue to be bound by the

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<sup>23</sup> De minimis rate adjustments are designed to only account for the effect of rate increases. Rate decreases must be filed as Type 1-A, Type 1-B, or Type 1-C rate adjustments. For the de minimis exemption to apply, the Postal Service may not offset rate increases with rate decreases.

annual limitation on rate adjustments. Additionally, the proposed rules would prevent the Postal Service from filing a series of notices of de minimis rate increases if the sum of all rate increases resulting from those de minimis rate adjustments equals or exceeds 0.001 percent. This requirement would allow the Commission to ensure that the cumulative effect of small rate increases is less than 0.001 percent.

In order to ensure that the cumulative impact of de minimis rate increases does not exceed 0.001 percent, proposed § 3010.30(e) requires that the Postal Service file workpapers for the class that demonstrate that the total effect of every de minimis rate increase since the last Type 1-A or Type 1-B rate adjustment does not equal or exceed 0.001 percent. These workpapers should only include de minimis rate increases and should be updated versions of the workpapers for the class from the most recent Type 1-A or Type 1-B rate adjustment.

#### **IV. Comments Requested**

Interested persons are invited to provide written comments concerning the proposed rules. Comments may include specific language amending the proposed rules.

Comments are due no later than 45 days after the date of publication of this notice in the **Federal Register**. All comments and suggestions received will be available for review on the Commission's Web site, <http://www.prc.gov>.

Interested persons are further invited to review the submissions and provide follow-up comments and suggestions within 30 additional days (that is, within 75 days of the publication of this notice in the **Federal Register**).

Kenneth E. Richardson is designated the Public Representative to represent the interests of the general public in this docket.

## **V. Explanation of Proposed Rules**

Following is a section-by-section analysis of the proposed rules.

Proposed § 3010.1 adds a definition of the term “rate of general applicability.” It also includes definitions and amendments to existing definitions relating to Type 1–C rate adjustments and de minimis rate adjustments. Finally, it specifies that the definitions apply to the entire part, not just subpart A.

Proposed § 3010.3(a) specifies that Type 1–C rate adjustments are consistent with 39 U.S.C. 3622.

Proposed § 3010.3(b)(2) specifies that a Type 1–C rate adjustment may not be combined with any other type of rate adjustment.

Proposed § 3010.4(a) eliminates a superfluous word.

Proposed § 3010.5 specifies that a Type 1–B rate adjustment is based on both the annual limitation and unused rate adjustment authority.

Proposed § 3010.6 contains a general description of a Type 1-C rate adjustment.

Proposed § 3010.10(a) includes a conforming change.

Proposed § 3010.11 contains conforming changes in the heading and in paragraphs (a) and (k).

Proposed § 3010.12(a) contains a conforming change.

Proposed § 3010.12(b) specifies the contents of notices that include rate incentives and of Type 1-C notices of rate adjustments.

Proposed § 3010.20(e) specifies that there is no limit on the amount of a rate decrease under a Type 1-C rate adjustment.

Proposed § 3010.21 contains conforming changes in the heading and in paragraph (b).

Proposed § 3010.22 contains conforming changes in the heading and in paragraph (b).

Proposed § 3010.23(a) includes definitions of the terms “current rate,” “rate cell,” and “rate incentive.”

Proposed § 3010.23(b)(2) provides for the calculation of the percentage changes in rates for Type 1-C rate adjustments.

Proposed § 3010.23(c) contains conforming changes.

Proposed § 3010.23(d) changes the format, but not the content, of existing section 3010.23(d) and adds a provision specifying the treatment of deleted rate cells.

Proposed § 3010.23(e) provides for the treatment of rate incentives.

Proposed § 3010.24 specifies that rate incentives that are not rates of general applicability will be treated in the same manner as negotiated service agreements.

Proposed § 3010.26 contains conforming changes.

Proposed § 3010.27 describes how unused rate adjustment authority is calculated for Type 1–C rate adjustments.

Proposed § 3010.30 contains the requirements for de minimis rate increases.

## **VI. Ordering Paragraphs**

*It is ordered:*

1. Docket No. RM2014-3 is established for the purpose of receiving comments with respect to the proposed rules attached to this order.
2. Interested persons may submit comments no later than 45 days after the date of publication of this notice in the **Federal Register**.
3. Reply comments may be filed no later than 75 days after the date of publication of this notice in the **Federal Register**.
4. Kenneth E. Richardson is designated the Public Representative to represent the interests of the general public in this docket.
5. The Secretary shall arrange for publication of this order in the **Federal Register** in conformance with official publication requirements.

### **List of Subjects in 39 CFR Part 3010**

Administrative practice and procedure; Postal Service.

By the Commission.

**Ruth Ann Abrams,**

*Acting Secretary.*

For the reasons stated above, the Postal Regulatory Commission proposes to amend 39 CFR part 3010 to read as follows:

**PART 3010—REGULATON OF RATES FOR MARKET DOMINANT PRODUCTS**

1. The authority citation for 39 CFR part 3010 continues to read as follows:

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

2. Revise § 3010.1 to read as follows:

**§ 3010.1 Definitions.**

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

(b) *Annual limitation* means:

(1) In the case of a notice of a Type 1-A or Type 1-B rate adjustment filed 12 or more months after the last Type 1-A or Type 1-B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to § 3010.21;

(2) In the case of a notice of a Type 1–A or Type 1–B rate adjustment filed less than 12 months after the last Type 1–A or Type 1–B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to § 3010.22; and

(3) In the case of a notice of a Type 1–C rate adjustment, the annual limitation calculated pursuant to § 3010.21 or § 3010.22, as applicable, for the most recent notice of a Type 1–A or Type 1–B rate adjustment.

(c) *Class* means a class of market dominant postal products.

(d) *De minimis rate increase* means a rate adjustment described in § 3010.30.

(e) *Maximum rate adjustment* means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type 1–A or Type 1–B rate adjustment. The maximum rate adjustment is calculated in accordance with § 3010.20.

(f) *Most recent Type 1–A or Type 1–B notice of rate adjustment*, when used in reference to a notice of rate adjustment for a class, means the most recent Type 1–A or Type 1–B notice of rate adjustment for that class.

(g) *Rate of general applicability* means a rate applicable to all mail meeting standards established by the Mail Classification Schedule and the Domestic 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 or group of mailers is not a rate of general applicability.

(h) *Type 1-A rate adjustment* means a rate adjustment described in § 3010.4.

(i) *Type 1-B rate adjustment* means a rate adjustment described in § 3010.5.

(j) *Type 1-C rate adjustment* means a rate adjustment described in § 3010.6.

(k) *Type 2 rate adjustment* means a rate adjustment described in § 3010.7.

(l) *Type 3 rate adjustment* means a rate adjustment described in § 3010.8.

(m) *Unused rate adjustment authority* means:

(1) In the case of a Type 1-A or Type 1-B rate adjustment, the percentage calculated pursuant to § 3010.26; and

(2) In the case of a Type 1-C rate adjustment, the percentage calculated pursuant to § 3010.27.

3. In § 3010.2, revise the first sentence to read as follows:

**§ 3010.2 Applicability**

The rules in this part implement provisions in 39 U.S.C. chapter 36, subchapter I, establishing rate setting policies and procedures for market dominant products. \* \* \*

4. Revise § 3010.3 to read as follows:

**§ 3010.3 Types of rate adjustments for market dominant products.**

(a) There are five types of rate adjustments for market dominant products.

A Type 1–A rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(D). A Type 1–B rate adjustment is authorized under 39 U.S.C. 3622(d)(2)(C). A Type 1–C rate adjustment is authorized under 39 U.S.C. 3622. A Type 2 rate adjustment is authorized under 39 U.S.C. 3622(c)(10). A Type 3 rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(E).

(b)(1) The Postal Service may combine Type 1–A, Type 1–B, and Type 2 rate adjustments for purposes of filing with the Commission.

(2) The Postal Service may not combine a Type 1–C rate adjustment with any other type of rate adjustment. The Postal Service may file a Type 1–C rate adjustment and a de minimis rate increase contemporaneously, but the Type 1–C rate adjustment and the de minimis rate increase must be contained in separate notices of rate adjustment.

5. In § 3010.4, revise paragraph (a) to read as follows:

**§ 3010.4 Type 1–A rate adjustment—in general.**

(a) A Type 1–A rate adjustment is an adjustment based on the annual limitation.

\* \* \* \* \*

6. Revise § 3010.5 to read as follows:

**§ 3010.5 Type 1–B rate adjustment—in general.**

A Type 1–B rate adjustment is an adjustment that is based on the annual limitation and that uses unused rate adjustment authority in whole or in part.

**§§ 3010.6, 3010.7 and 3010.8 [REDESIGNATED AS §§ 3010.7, 3010.8 and 3010.9]**

7. Redesignate §§ 3010.6, 3010.7 and 3010.8 as §§ 3010.7, 3010.8 and 3010.9, respectively.

8. Add new § 3010.6 to read as follows:

**§ 3010.6 Type 1–C rate adjustment—in general.**

(a) A Type 1–C rate adjustment is an adjustment to a rate of general applicability that contains only a decrease. A rate adjustment that includes both an increase and a decrease in rates of general applicability is a Type 1–A or Type 1–B rate adjustment; it is not a Type 1–C rate adjustment.

(b) A Type 1–C rate adjustment may generate unused rate adjustment authority, as described in § 3010.27. However, the Postal Service may elect not to generate unused rate adjustment authority in a Type 1–C rate adjustment.

9. In § 3010.10, revise paragraph (a) to read as follows:

**§ 3010.10 Notice.**

(a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1–A, Type 1–B, or Type 1–C rate adjustment for a class shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 45 days prior to the intended implementation date of the rate adjustment; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date of the rate adjustment.

\* \* \* \* \*

10. In Amend § 3010.11 revise the heading, the introductory text of paragraph (a), paragraph (b)(2), paragraph (d), and paragraph (k) to read as follows:

**§ 3010.11 Proceedings for Type 1–A, Type 1–B, and Type 1–C rate adjustment filings.**

(a) The Commission will establish a docket for each notice of Type 1–A, Type 1–B, or Type 1–C rate adjustment filing, promptly publish notice of the filing in the **Federal Register**, and post the filing on its Web site. The notice shall include:

\* \* \* \* \*

(b) \* \* \*

(2) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the limitation established in § 3010.29.

\* \* \* \* \*

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under § 3010.21 or § 3010.22, as applicable, the limitation set forth in § 3010.29, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

\* \* \* \* \*

(k) A Commission finding that a planned Type 1-A, Type 1-B, or Type 1-C rate adjustment is in compliance with the annual limitation calculated under § 3010.21 or § 3010.22, as applicable; the limitation set forth in § 3010.29; and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned Type 1-A, Type 1-B, or Type 1-C rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter I is provisional and subject to subsequent review.

11. In § 3010.12, revise the introductory text of paragraph (a), paragraph (b)(4) and paragraph (e), redesignate existing paragraphs (b)(9) and (b)(10) as

(b)(11) and (b)(12), respectively, and add new paragraphs (b)(9) and (b)(10) to read as follows:

**§ 3010.12 Contents of notice of rate adjustment.**

(a) A Type 1–A, Type 1–B, or Type 1–C notice of rate adjustment must include the following information:

\* \* \* \* \*

(b) \* \* \*

(4) The amount of new unused rate adjustment authority, if any, that will be generated by the rate adjustment calculated as required by § 3010.26 or § 3010.27, as applicable. All calculations are to be shown with citations to the original sources. If new unused rate adjustment authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment.

\* \* \* \* \*

(9) For a notice that includes a rate incentive:

(i) 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

(ii) Whether the Postal Service has excluded the rate incentive from the calculation of the percentage change in rates under § 3010.23(e) or § 3010.24.

(10) For a Type 1-C rate adjustment, whether the Postal Service elects to generate unused rate adjustment authority.

\* \* \* \* \*

(e) The notice of rate adjustment shall identify for each affected class how much existing unused rate adjustment authority is used in the planned rates calculated as required by § 3010.28. All calculations are to be shown, including citations to the original sources.

\* \* \* \* \*

12. In § 3010.20, revise paragraphs (b) and (d) and add paragraph (e) to read as follows:

**§ 3010.20 Calculation of maximum rate adjustment.**

\* \* \* \* \*

(b) Type 1-A and Type 1-B rate adjustments are subject to an inflation-based annual limitation computed using CPI-U values as detailed in §§ 3010.21(a) and 3010.22(a).

\* \* \* \* \*

(d) In any 12-month period the maximum rate adjustment applicable to a class is:

(1) For a Type 1-A notice of rate adjustment, the annual limitation for the class; and

(2) For a Type 1–B notice of rate adjustment, the annual limitation for the class plus the unused rate adjustment authority for the class that the Postal Service elects to use, subject to the limitation under § 3010.29.

(e) There is no limitation on the amount of a rate decrease contained in a notice of Type 1–C rate adjustment.

13. In § 3010.21, revise the heading and paragraph (b) to read as follows:

**§ 3010.21 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are 12 or more months apart.**

\* \* \* \* \*

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed 12 or more months after the most recent Type 1–A or Type 1–B notice of rate adjustment, then the calculation of an annual limitation for the class (referred to as the *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 the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, 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). Finally, 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.

\* \* \* \* \*

14. In § 3010.22, revise the heading and paragraphs (a) and (b) to read as follows:

**§ 3010.22 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are less than 12 months apart.**

(a) The monthly CPI-U values needed for the calculation of the partial year limitation 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.”

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed less than 12 months after the most recent Type 1–A or Type 1–B notice of rate adjustment, then the annual limitation for the class (referred to as the *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.

\* \* \* \* \*

15. Revise § 3010.23 to read as follows:

**§ 3010.23 Calculation of percentage change in rates.**

(a) *Definitions.* In this section:

(1) *Current rate.*

(i) *In general.* Except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, the term *current rate* means the rate in effect when the Postal Service files the notice of rate adjustment.

(ii) *Seasonal and temporary rates.* When used with respect to a seasonal or temporary rate, as described in paragraph (a)(2) of this section, the term *current rate* means the most recent rate in effect for the rate cell, regardless of whether the seasonal or temporary rate is available at the time the Postal Service files the notice of rate adjustment.

(iii) *Exception.* 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 under paragraph (e)(1) of this section, the term *current rate* means the full undiscounted rate in effect for the rate cell at the time of the filing of the notice of rate adjustment, not the discounted rate in effect for the rate cell at such time. For example, if a rate incentive provides a 5-cent discount on a 25-cent rate and the Postal Service previously elected to exclude the rate incentive from the calculation of the percentage change in rates, the Postal Service may choose to begin including the discounted rate in its calculation of the percentage change in rates. If the Postal Service makes that choice, the current rate for the discounted rate cell will be 25 cents (the full undiscounted rate).

(2) *Rate cell.* The term *rate cell* means each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. 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.

(3) *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.

(b) *Calculation.*

(1) *Type 1-A and Type 1-B rate adjustments.* For a Type 1-A or Type 1-B rate adjustment, 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. Then, the same set of rate cell volumes are multiplied by the corresponding current rate for each cell and the resulting products are summed. Finally, 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.

(2) *Type 1-C rate adjustments.* For a Type 1-C rate adjustment, 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 Type 1–A or Type 1–B notice of rate adjustment to replace the planned rates under the most recent Type 1–A or Type 1–B notice of rate adjustment with the corresponding planned rates applicable to the class from the Type 1–C notice of rate adjustment.

(c) *Formula.* The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

Percentage change in rates =

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

Where,

N = number of rate cells in the class

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

R<sub>i,n</sub> = planned rate of rate cell i

R<sub>i,c</sub> = current rate of rate cell i (for a Type 1–A or Type 1–B rate adjustment) or rate from most recent Type 1–A rate adjustment for rate cell i (for a Type 1–C rate adjustment)

V<sub>i</sub> = volume of rate cell i

(d) *Volumes.*

(1) *Obtaining Volumes from billing determinants.* The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants.

(2) *Permissible adjustments.* 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.

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

(4) *Adjustment for deletion of rate cell.* 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 zero. If the Postal Service does not adjust the billing determinants for the rate cell to zero, the Postal Service shall include a rationale for its treatment of the rate cell with the information required under paragraph (d)(2) of this section.

(e) *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 § 3010.24).

(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.

16. Revise § 3010.24 to read as follows:

**§ 3010.24 Treatment of volume associated with negotiated service agreements and rate incentives that are not rates of general applicability.**

(a) 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 percentage change in rates under § 3010.23 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 percentage change in rates.

(b) 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.

17. In section 3010.26, revise the heading and paragraphs (b) and (e) to read as follows:

**§ 3010.26 Calculation of unused rate adjustment authority for Type 1–A and Type 1–B rate adjustments.**

\* \* \* \* \*

(b) When notices of Type 1–A or Type 1–B rate adjustments are filed 12 months apart or less, annual unused rate adjustment authority will be calculated. Annual unused rate adjustment authority for a class is equal to the difference between the annual limitation calculated pursuant to § 3010.21 or § 3010.22 and the percentage change in rates for the class calculated pursuant to § 3010.23(b)(1).

\* \* \* \* \*

(e) Unused rate adjustment authority generated under this section lapses 5 years after the date of filing of the notice of rate adjustment leading to its calculation.

\* \* \* \* \*

**§ 3010.28 [Redesignated as § 3010.29 and amended.]**

18. Redesignate § 3010.28 as § 3010.29 and revise the heading to read as follows:

**§ 3010.29 Maximum size of Type 1-B rate adjustments.**

\* \* \* \* \*

**§ 3010.27 [Redesignated as § 3010.28.]**

19. Redesignate § 3010.27 as § 3010.28.

20. Add new § 3010.27 to read as follows:

**§ 3010.27 Calculation of unused rate adjustment authority for Type 1-C rate adjustments.**

(a) For a notice of Type 1-C rate adjustment, unused rate adjustment authority for a class is calculated in two steps. First, the difference between the annual limitation calculated pursuant to § 3010.21 or § 3010.22 for the most recent notice of Type 1-A or Type 1-B rate adjustment and the percentage change in rates for the class calculated pursuant to § 3010.23(b)(2) is calculated. Second, the unused rate adjustment authority generated in the most recent Type 1-A or Type 1-B rate adjustment is subtracted from that result.

(b) Unused rate adjustment authority generated under paragraph (a) of this section lapses 5 years after the date of filing of the most recent notice of Type 1-A or Type 1-B rate adjustment.

(c) 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 notice of Type 1-A rate adjustment on the schedule maintained under § 3010.26(f). For purposes of § 3010.28, 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 § 3010.26(f) on the same date as the most recent notice of Type 1-A or Type 1-B rate adjustment.

(d) Unused rate adjustment authority generated under paragraph (a) of this section shall be subject to the limitation under § 3010.29, regardless of whether it is used alone or in combination with other existing unused rate adjustment authority.

21. Add new § 3010.30 to read as follows:

**§ 3010.30 De minimis rate increases.**

(a) The Postal Service may elect to file a Type 1-A notice of rate adjustment as a de minimis rate increase if:

(1) For each affected class, the rate increases contained within the notice of a Type 1-A rate adjustment 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 Type 1-A or Type 1-B rate

adjustment 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.

(b) No unused rate adjustment authority will be added to the schedule of unused rate adjustment authority maintained under § 3010.26(f) as a result of a de minimis rate increase.

(c) No rate decreases may be taken into account when determining whether rate increases comply with paragraphs (a)(1) and (a)(2) of this section.

(d) In the next notice of a Type 1-A or Type 1-B rate adjustment for a class that is not a de minimis rate increase:

(1) The annual limitation 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.

(e) The Postal Service shall file supporting workpapers with each notice of de minimis rate increase that demonstrate that the sum of all rate increases included in de minimis rate increases since the most recent Type 1-A or Type 1-B notice of rate adjustment that was not de minimis does not result in a percentage change in rates for the class equaling or exceeding 0.001 percent.