I. INTRODUCTION

The Public Representative hereby responds to the Commission’s request for comments on rules that it proposes in Order No. 5088.¹

Currently, when the Postal Service is informing the Commission of updates to size and weight limitations for market dominant mail matter pursuant to 39 U.S.C. § 3682 and rule 3020.111, it is required only to include a copy of the applicable section of the Mail Classification Schedule (MCS) and proposed updates to the MCS. Order No. 5088 proposes that the Postal Service file additional information with such filings to “[d]escribe the likely impact that the proposed update will have on users of the product(s) and on competitors”, 39 CFR § 3020.111(a)(2), and “[d]escribe how the proposed update is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.” 39 CFR § 3020.111(a)(3). The Order also indicates that if the Commission finds the proposed update would have “the effect of modifying the product lists such that a product is added, deleted, or transferred, the Commission may require a notice of a size/weight limitation change to be refiled under section 3642, as the Postal Service noted in its comments.” Order No. 5088 at 7-8.

II. BACKGROUND

On October 10, 2018, the Postal Service filed a request pursuant to 39 CFR § 3020.11 to change significantly the weight limit of Outbound Single-Piece First-Class Mail International (FCMI) Large Envelopes (Flats) from 64 ounces to 15.994 ounces. The Postal Service notice did not refer to 39 U.S.C. § 3642 regarding transfers of products between the market dominant and competitive product lists. Postal Service claimed § 3642 is inapplicable to changes in size and weight limitations since the affected product would continue to appear on the market dominant product list. The Postal Service also argued that because neither § 3682 nor the rules in Part 3020, Subpart B, governing Postal Service requests to modify product lists refer to § 3642, it is not required to provide information conforming to the requirements of § 3642 for product transfers. *Id.* at 3.

The Postal Service’s filing was approved on December 3, 2019 by Order No. 4932 as being in accordance with the policies and applicable criteria of chapter 36 of title 39. Order No. 4932 at 5, 6.

However, the Commission expressed concern in Order No. 4932 that the practical impact of the update is to transfer product from the market dominant product list to the competitive product list; further that the Postal Service could use the size and weight limitation regulations to make expansive changes to product lists without proper Commission oversight required by 39 U.S.C. § 3642. *Id.* at 5.

Consequently, the Commission initiated this rulemaking in Docket No. RM2019-3 to evaluate whether changes to MCS provisions that, in effect, add products to, remove

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2 Section 3642(a) provides: “Upon request of the Postal Service or [others] the Commission may change the list of market-dominant products…and the list of competitive products…by adding new products to the lists, removing products from the lists, or transferring products between the lists.” The section requires the Commission to determine the Postal Service does not exercise sufficient market power as defined over the product before permitting transfer to the list of competitive products.

3 Docket No. MC2019-3, Order Approving Update to Weight Limitation, December 19, 2018 (Order No. 4932) at 3 n. 7.
products from, or transfer products between product lists are changes that implicate the requirements of § 3642.\(^4\) Comments were requested on whether regulations should require the Postal Service to provide information pursuant to § 3642.

In responsive comments, the Public Representative agreed that a change having a significant impact on volume of the existing product suggests that the change amounts to a modification of the product lists under rule 3020.30. In such case, an update or material change *effectively* adds, deletes or transfers a product between lists. In those cases, it would be more efficient in the administration of the MCS to require the Postal Service to provide information with its initial filing for purposes of § 3642 review. In such cases, the Commission may define an effective product change as something significant but less than a 100 percent change in estimated volume.\(^5\) The Public Representative proposed an objective rule that if updates to size and weight limitations appear to transfer 50 percent of the volume of the impacted product to the competitive product list, the Postal Service must provide information in its § 3682 notice addressing the requirements of § 3642.\(^6\) Commenters other than the Postal Service also suggested that information pursuant to § 3642 should be required with the initial notice. Order No. 5088 at 3-4.

Following consideration of the comments, the Commission fashioned proposed compromise rules tailored to obtain in the initial Postal Service notice the impact of proposed size and weight limitation changes on users and competitors without specifically addressing the requirements of § 3642. The proposed rules are calculated to determine whether there would be an impact on users and competitors that implicates

\(^4\) Advance Notice of Proposed Rulemaking Concerning Classification Changes Modifying Product Lists, (Order No. 4987) January 29, 2019, at 1, 3.

\(^5\) Public Representative Comments, April 5, 2019, at 9.

\(^6\) More specifically, the Public Representative proposed, “If the request for a material change is estimated to modify the volume of a market dominant product in the subsequent year by more than 50 percent compared to the current year, the request shall also include the information required by subsections 3020.32(b)-(i) pertaining to 39 U.S.C. § 3642.” *Id.* at 10-11.
§ 3642. If the Commission then determines that a product is added, deleted, or transferred, it may order a refiling pursuant to § 3642.

III. PUBLIC REPRESENTATIVE COMMENT

The Commission’s proposed rules will assist the Commission in determining whether § 3642 may be implicated by the notice of update to size and weight limitations and thereby avoid the need for clarifying information requests in many instances and thus aid in more efficient review of such cases. The Commission did not determine whether the Commission may consider § 3642 when considering § 3682 notices. Order No. 5088 at 7 n. 8. But the Commission recognizes that changes of size and weight limitations may require consideration under § 3642 and therefore it may require a refiling under § 3642. This policy allows that the Commission may order refiling to review changes in size and weight limitations pursuant to § 3642 to protect mailers operating under price cap rates from extreme product changes that may subject them to unregulated prices. The Public Representative therefore has no objection to the proposed amendments to rule 3020.111(a).

IV. CONCLUSION

The Public Representative respectfully submits the foregoing comments for the Commission’s consideration.

Respectfully submitted,

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