I. INTRODUCTION

In this Order, the Commission adopts final rules regarding updates to the size and weight limitations applicable to market dominant mail matter.

II. BACKGROUND

Section 3682 provides that the Postal Service may establish size and weight limitations for mail matter in the market dominant category of mail consistent with regulations the Commission may prescribe under section 3622. 39 U.S.C. § 3682. Section 3020.111(a) requires the Postal Service to inform the Commission of updates to size and weight limitations for market dominant mail matter. 39 C.F.R. §3020.111(a). The Commission is required to evaluate any proposed updates “in accordance with the policies and the applicable criteria” of chapter 36 of title 39 of the United States Code. 39 C.F.R. § 3020.111(c). In a recent proceeding, the Commission expressed concerns...
that “the Postal Service could use the size and weight limitation regulations to make extensive changes to product lists without proper Commission oversight.”

On January 29, 2019, the Commission initiated this docket to evaluate whether changes to Mail Classification Schedule provisions that, in effect, add products to, remove products from, or transfer products between product lists are changes that implicate the requirements of 39 U.S.C. § 3642. The Commission sought comments from interested parties on whether it should update its regulations to require information pursuant to section 3642 when changes to the size and weight limitations appear to modify the product lists. Order No. 4987 at 3.

The National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement; the Association for Postal Commerce (PostCom); the Postal Service; and the Public Representative submitted comments.

On May 8, 2019, the Commission proposed changes to 39 C.F.R. § 3020.111(a) to include the requirement that the Postal Service describe how a proposed update to a size or weight limitation would impact competitors and users of the product(s). The Commission also proposed a requirement that the Postal Service explain how a size and weight limitation change is in accordance with the policies and applicable criteria of chapter 36 of title 39 of the United States Code. Order No. 5088 at 6.

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2 See Advance Notice of Proposed Rulemaking Concerning Classification Changes Modifying Product Lists, January 29, 2019 (Order No. 4987).

3 Comments of the National Postal Policy Council, the Major Mailers Association, the National Association of Presort Mailers, and the Association for Mail Electronic Enhancement, April 5, 2019; Comments of the Association for Postal Commerce, April 5, 2019; Comments of the United States Postal Service, April 5, 2019; Public Representative Comments, April 5, 2019.

4 Notice of Proposed Rulemaking Concerning Classification Changes Modifying Product Lists, May 8, 2019, at 6 (Order No. 5088).
III. SUMMARY OF COMMENTS

The Greeting Card Association (GCA), PostCom, and the Public Representative submitted comments in support of the proposed revisions to 39 C.F.R. § 3020.111(a).\(^5\)

GCA states that it does not suggest changes to the language of the proposed rules. GCA Comments at 1. GCA does suggest that the Commission clarify the scope of both the impact and chapter 36 policies provisions because not all provisions of the Postal Accountability and Enhancement Act of 2006, which might prove relevant in a proposed update, are found in chapter 36. \(\textit{Id.}\) GCA provided two examples and noted that the Commission could consider these provisions under proposed section 3020.111(a)(3). \(\textit{Id.}\) However, GCA recommends that “a Commission order adopting the proposed [rules] make clear that issues covered by a provision outside chapter 36 will receive full consideration.” \(\textit{Id.}\) at 2.

PostCom comments that the proposed rules are an important step in protecting against unreasonable price increases, material harm to users or competitors, or other abuses of market power. PostCom Comments at 1-2. PostCom explains that the proposed rules satisfy the two primary criteria identified in its previous comments, that: (1) the rules apply to all size and weight changes proposed by the Postal Service, and (2) the rules place the initial burden on the Postal Service of identifying impacts and assessing compliance. \(\textit{Id.}\) at 2. PostCom asserts that, ideally, the rules would require the Postal Service to “specifically indicate whether the changes would reclassify market-dominant volume as competitive.” \(\textit{Id.}\) However, PostCom notes that this analysis would be included in the additional information required by the rules. \(\textit{Id.}\)

The Public Representative states that the “proposed rules will assist the Commission in determining whether § 3642 may be implicated by the notice of update to size and weight limitations.” PR Comments at 4. He explains that the rules will allow the Commission to “avoid the need for clarifying information requests in many instances

\(^5\) Comments of the Greeting Card Association, June 13, 2019 (GCA Comments); Comments of the Association for Postal Commerce, June 13, 2019 (PostCom Comments); Public Representative Comments on Order No. 5088, June 13, 2019 (PR Comments).
and [therefore] aid in more efficient review.” *Id.* Thus, he has no objection to the proposed amendments to rule 3020.111(a). *Id.*

IV. COMMISSION ANALYSIS

After consideration of the comments submitted, the Commission finds that the amendments to 39 C.F.R. § 3020.111(a) strike the appropriate balance between requiring additional information to adequately assess the potential effects of a size and weight limitation change, without being unduly burdensome to the Postal Service. Moreover, the Commission finds that the proposed amendments are sufficient for the Commission to analyze whether a proposed size and weight limitation change would involve unreasonable price increases, unreasonable discrimination, or any other material harm to users and competitors. Although both GCA and PostCom expressed concern regarding the scope of the rules and possible impacts on volume, both commenters noted that the Commission could address those concerns via proposed sections 3020.111(a)(2) and (3). Accordingly, the Commission adopts the revisions to 39 C.F.R. § 3020.111(a), as proposed in Order No. 5088.

V. REGULATORY FLEXIBILITY ACT ANALYSIS

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. See 5 U.S.C. § 601, *et seq.* (1980). If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. §§ 603 and 604 do not apply. See 5 U.S.C. § 605(b).

In the context of this rulemaking, the Commission’s primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose any regulatory obligation upon any other entity. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this
rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. § 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. §§ 603 and 604.

VI. ORDERING PARAGRAPHS

It is ordered:

1. Part 3020 of title 39, Code of Federal Regulations, is amended as set forth below the signature of this Order, effective 30 days after publication in the Federal Register.

2. The Secretary shall arrange for publication of the amended rules and general statement as to the basis and purpose of the amended rules in the Federal Register.

By the Commission.

Ruth Ann Abrams
Acting Secretary
List of Subjects for 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons stated in the preamble, the Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3020—PRODUCT LISTS

1. The authority citation for part 3020 continues to read as follows:


2. Amend § 3020.111, by revising paragraph (a) to read as follows:

§ 3020.111 Limitations applicable to market dominant mail matter.

(a) The Postal Service shall inform the Commission of updates to size and weight limitations for market dominant mail matter by filing notice with the Commission 45 days prior to the effective date of the proposed update. The notice shall:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed updates therein in legislative format;

(2) Describe the likely impact that the proposed update will have on users of the product(s) and on competitors; and

(3) Describe 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.

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