ORDER NO. 6471

UNITED STATES OF AMERICA

POSTAL REGULATORY COMMISSION

WASHINGTON, DC 20268-0001

Before Commissioners: Michael Kubayanda, Chairman;  
 Mark Acton, Vice Chairman;  
 Ann C. Fisher;  
 Ashley E. Poling; and  
 Robert G. Taub

Public Inquiry on Review of Docket No. PI2023-2

Postal Service Cost Attribution

NOTICE AND ORDER INITIATING PROCEEDING

TO REVIEW POSTAL SERVICE COST ATTRIBUTION

(Issued March 31, 2023)

1. INTRODUCTION

Pursuant to section 203 of the Postal Service Reform Act of 2022 (PSRA),[[1]](#footnote-2) the Commission initiates a review of regulations issued pursuant to 39 U.S.C. §§ 3633(a) and 3652(a)(1)[[2]](#footnote-3) relating to postal cost attribution to determine whether any revisions to those regulations, or to any analytical principles (including any costing methodologies or cost models) used in postal cost attribution, are appropriate.

1. BACKGROUND

The PSRA, enacted on April 6, 2022, amended Title 39 of the United States Code and other relevant statutory provisions. Among other changes, section 203 of the PSRA added a note to 39 U.S.C. § 3633, which requires that the Commission, no later than April 6, 2023,

initiate a review of the regulations issued pursuant to sections 3633(a) and 3652(a)(1) of title 39, United States Code, to determine whether revisions are appropriate to ensure that all direct and indirect costs attributable to competitive and market-dominant products are properly attributed to those products, including by considering the underlying methodologies in determining cost attribution and considering options to revise such methodologies.

PSRA § 203. Section 203 also specifies that, if, after notice and public comment, the Commission determines “that revisions are appropriate, the Commission shall make modifications or adopt alternative methodologies as necessary.” *See id.*

Regulations issued pursuant to 39 U.S.C. §§ 3633(a) and 3652(a)(1) that are relevant to postal cost attribution are listed below in Table II-1.

**Table II-1**

**Regulations Issued Pursuant to 39 U.S.C. §§ 3633(a) and 3652(a)(1)**

|  |  |
| --- | --- |
| **39 C.F.R. Part 3035—Regulation of Rates for Competitive Products**[[3]](#footnote-4) | |
| 39 C.F.R. § 3035.107(a) | * Providing that the Commission will use incremental costs to test for cross-subsidization of Competitive products by Market Dominant products. *See* 39 U.S.C. § 3633(a)(1) (requiring that the Commission “prohibit the subsidization of competitive products by market-dominant products”). |
| 39 C.F.R. § 3035.107(b) | * Providing that the Commission will calculate a Competitive product’s attributable costs as the sum of its volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a Competitive product's incremental costs. *See* 39 U.S.C. § 3633(a)(2) (requiring that the Commission “ensure that each competitive product covers its costs attributable”); *see also* 39 U.S.C. § 3631(b) (defining “costs attributable” as “the direct and indirect postal costs attributable to such product through reliably identified causal relationships”). |

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| --- | --- |
| **39 C.F.R. Part 3050—Periodic Reporting** | |
| 39 C.F.R. § 3050.21(c) | * Requirement that the Postal Service’s section 3652 report include the attributable costs of each postal product |
| 39 C.F.R. § 3050.21(f)(2) | * Requirement that the Postal Service’s section 3652 report estimate the costs of each Market Dominant negotiated service agreement |
| 39 C.F.R. § 3050.21(g)(2) | * Requirement that the Postal Service’s section 3652 report estimate the costs of each Competitive negotiated service agreement |
| 39 C.F.R. § 3050.21(h)(1) | * Requirement that the Postal Service’s section 3652 report estimate the costs of each market test of an experimental product |
| 39 C.F.R. § 3050.21(i) | * Requirement that the Postal Service’s section 3652 report estimate the costs of each nonpostal service |
| 39 C.F.R. § 3050.21(l) | * Requirement that the Postal Service’s section 3652 report, with respect to the Inbound Letter Post product, provide attributable cost by Universal Postal Union country group and by shape for the fiscal year subject to review and each of the preceding 4 fiscal years |
| 39 C.F.R. § 3050.22 | * Requirement that the Postal Service’s section 3652 report include certain specified documentation supporting attributable cost estimates whenever information has changed since the most recent *Annual Compliance Determination* |
| 39 C.F.R. § 3050.23 | * Requirement that the Postal Service’s section 3652 report include certain specified documentation supporting incremental cost estimates |

|  |  |
| --- | --- |
| **39 C.F.R. Part 3060—Accounting Practices and Tax Rules for the Theoretical Competitive Products Enterprise** | |
| 39 C.F.R. § 3060.10(b) | * Providing that the Commission will calculate a Competitive product’s attributable costs for purposes of the calculation of the net income for the Postal Service’s theoretical Competitive products enterprise as including volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a Competitive product’s incremental costs. S*ee* 39 U.S.C. § 3634(b) (requiring the Postal Service to annually compute an assumed Federal income tax on Competitive products and transfer that amount from the Competitive Products Fund to the Postal Service Fund). |

The Postal Service uses a two-tier costing system to categorize its accrued costs. The Postal Service first identifies all costs that can be reliably and causally linked to individual postal products or groups of products, using Commission-approved analytical principles, and attributes those costs to products or product groupings. All remaining costs are classified as institutional. This two-tier postal costing approach, which is deeply rooted in the Postal Service’s historical treatment of costs,[[4]](#footnote-5) has been adopted into Title 39 of the United States Code.[[5]](#footnote-6) Specifically, Sections 3631(b) and 3622(c) of Title 39 of the United States Code expressly codify “reliably identified causal relationships” as the standard for cost attribution. A detailed description of the approach to postal cost attribution currently employed by the Postal Service and the Commission appears inDocket Nos. RM2017-1 and RM2022-2, Supplemental Notice of Proposed Rulemaking and Order Initiating the Third Review of the Institutional Cost Contribution Requirement for Competitive Products, November 18, 2021, at 11-35 (Order No. 6043).

Since the enactment of the Postal Accountability and Enhancement Act (PAEA) and the Commission’s subsequent promulgation of regulations,[[6]](#footnote-7) the Postal Service has improved the information used as the basis for cost attribution by changing or upgrading numerous data systems and updating and improving special cost studies. As a result, the Commission has presided over numerous rulemakings that have affected cost attribution. For example, Docket No. RM2016-2 involved the Commission’s rejection of a proposal to calculate and attribute inframarginal costs, which had historically been treated as institutional costs, to Competitive products.[[7]](#footnote-8) The Commission recognized, however, that some inframarginal costs were causally related to specific postal products or groups of products and could be reliably identified through the calculation of incremental costs. Order No. 3506 at 42. This resulted in the redefinition and expansion of attributable costs, along with revisions to 39 C.F.R. §§ 3035.107(b) and 3060.10(b).

Cost attribution can be affected in major or minor ways through Commission proceedings that involve changes in “analytical principles.” Analytical principles refer to economic, mathematical, or statistical theories, precepts, or assumptions applied by the Postal Service in producing required periodic reports. *See* 39 C.F.R. § 3050.1(c). Analytical principles include, but are not limited to, costing methodologies and cost models that the Postal Service relies upon to generate cost-related data. The Commission has presided over many such proceedings to change accepted analytical principles since the PAEA was enacted.

The Commission is currently in the process of conducting a strategic rulemaking proceeding to consider further possible improvements to the quality, accuracy, or completeness of data provided by the Postal Service pursuant to 39 U.S.C. § 3652.[[8]](#footnote-9) The Commission intends, with input from commenters, to develop an inventory of data collection and analysis needs (including needs with respect to analytical principles involving postal cost attribution) and then comprehensively to evaluate those needs and devise a plan for meeting them. *See* Order No. 6004at 9. Order No. 6004 summarizes, by topic, major developments that have occurred in the area of postal cost attribution since the Commission’s first such strategic rulemaking more than a decade ago, which interested parties may find useful for purposes of commenting in the instant proceeding.[[9]](#footnote-10)

Table II-2 provides examples of more recent proceedings involving changes in analytical principles related to cost attribution that were proposed by the Postal Service and that either are pending or have been decided since the issuance of Order No. 6004.

**Table II-2**

**Recent Postal Service Proposals Involving Changes in Analytical Principles  
Impacting Cost Attribution**

| Docket No. | Postal Service Proposal No.\* | Synopsis | Final Order No. |
| --- | --- | --- | --- |
| RM2022-13 | Six | Updating methodology used for distributing peak season highway transportation costs to products | 6322 |
| RM2022-11 | Five | Updating cost proportions used to estimate accrued Contract Delivery Service (CDS) costs and revising the distribution key used to attribute CDS costs to products | 6307 |
| RM2022-10 | Four | Adopting changes designed to streamline and improve the International Cost and Revenue Analysis (ICRA) Report | 6279 |
| RM2022-9 | Three | Modifying Revenue, Pieces, and Weight (RPW) reporting methodology for measuring country-level totals of contract mailpieces in outbound international product categories bearing permit-imprint indicia by replacing sampling estimates with granular census data | 6272 |
| RM2022-8 | Two | Updating variability analysis used to attribute postmaster costs | 6280 |
| RM2022-3 | One | Proposing to update methodology for calculating attributable city carrier, letter route, street time costs by employing an overall top-down model relying on expanded operational carrier data | Pending |
| RM2021-8 | Five | Approving separate treatment of international surface transportation expenses to Canada in periodic reports, and approving use of additional Foreign Postal Settlement (FPS) data to more accurately distribute international surface transportation expenses to Canada | 6033 |
| RM2021-3 | One | Proposing to update methodology for estimating revenue, pieces, and weight for domestic products reported in the Revenue, Pieces, and Weight (RPW) Report by reducing use of sampling estimates | Pending |
| RM2020-13 | Six | Denying proposal to implement new methodology for estimating volume variabilities for certain mail processing cost pools | 6096 |

Note\*: Proposals to change accepted analytical principles pursuant to 39 C.F.R. § 3050.11 are sequentially numbered per party per the fiscal year in which the proposal is filed. For example, the first proposal filed by the Postal Service in a given fiscal year is referred to as “Postal Service Proposal One,” and this numbering sequence restarts each fiscal year.

Sources: Docket No. RM2022-13, Order on Analytical Principles Used in Periodic Reporting (Proposal Six), November 3, 2022 (Order No. 6322); Docket No. RM2022-11, Order Approving Analytical Principles Used in Periodic Reporting (Proposal Five), October 20, 2022 (Order No. 6307); Docket No. RM2022-10, Order Approving Analytical Principles Used in Periodic Reporting (Proposal Four), September 23, 2022 (Order No. 6279); Docket No. RM2022-9, Order on Analytical Principles Used in Periodic Reporting (Proposal Three), September 12, 2022 (Order No. 6272); Docket No. RM2022-8, Order on Analytical Principles Used in Periodic Reporting (Proposal Two), September 23, 2022 (Order No. 6280); Docket No. RM2022-3, Notice of Proposed Rulemaking on Analytical Principles Used in Periodic Reporting (Proposal One), January 10, 2022 (Order No. 6090); Docket No. RM2021-8, Order on Analytical Principles Used in Periodic Reporting (Proposal Five), November 5, 2021 (Order No. 6033); Docket No. RM2021-3, Notice of Proposed Rulemaking on Analytical Principles Used in Periodic Reporting (Proposal One), March 16, 2021 (Order No. 5847); Docket No. RM2020-13, Order on Analytical Principles Used in Periodic Reporting (Proposal Six), January 26, 2022 (Order No. 6096).

# INVITATION TO COMMENT

The Commission invites interested persons to comment on regulations related to Postal Service cost attribution as identified in Table II-I, *supra,* as well as the analytical principles (including costing methodologies or cost models) underlying postal cost attribution. Comments should focus on whether revisions to any regulationsor analytical principles are necessary “to ensure that all direct and indirect costs attributable to competitive and market-dominant products are properly attributed to those products....” PSRA § 203. Commenters are reminded that the scope of this docket is focused on regulations and analytical principles pertaining to cost attribution. *See* n.3, *supra*.

# Administrative actions

Pursuant to section 203 of the PSRA, the Commission establishes Docket No. PI2023-2 in order to review regulations issued pursuant to 39 U.S.C. §§ 3633(a) and 3652(a)(1) relevant to the issue of postal cost attribution, as well as analytical principles (including costing methodologies or cost models) relevant to postal cost attribution. The Commission intends to evaluate the comments received and use those suggestions to help carry out the responsibilities described in section 203 of the PSRA. Comments are due no later than June 14, 2023. Reply comments are due no later than July 14, 2023.

Comments and other material filed in this proceeding will be available for review on the Commission’s website, unless the information contained therein is subject to an application for non-public treatment. The Commission’s rules on non-public materials (including access to documents filed under seal) appear in 39 C.F.R. part 3011.

Pursuant to 39 U.S.C. § 505, the Commission appoints Katalin K. Clendenin to represent the interests of the general public (Public Representative) in this proceeding.

# ordering paragraPhs

*It is ordered*:

1. Docket No. PI2023-2 is established for the purpose of reviewing regulations and costing methodologies associated with Postal Service cost attribution.
2. Comments are due no later than June 14, 2023.
3. Reply comments are due no later than July 14, 2023.
4. Katalin K. Clendenin is designated to represent the interests of the general public in this docket.
5. The Secretary shall arrange for publication of a general statement as to the basis and purpose of this Notice in the *Federal Register.*

By the Commission.

Erica A. Barker

Secretary

1. Pub. L. 117-108, 136 Stat. 1127 (2022). [↑](#footnote-ref-2)
2. 39 U.S.C. § 3633 contains provisions applicable to rates for Competitive products. Specifically, 39 U.S.C. § 3633(a) provides that the Commission “shall, within 18 months after the date of enactment of this section, promulgate (and may from time to time thereafter revise) regulations to—(1) prohibit the subsidization of competitive products by market-dominant products; (2) ensure that each competitive product covers its costs attributable; and (3) ensure that all competitive products collectively cover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service. *See* 39 U.S.C. § 3633(a).

   Section 3652 of Title 39 of the United States Code requires certain reporting by the Postal Service to the Commission; 39 U.S.C. § 3652(a) requires the Postal Service to, no later than 90 days after the end of each year, prepare and submit to the Commission a report; and 39 U.S.C. § 3652(a)(1) specifies that in the report the Postal Service “shall analyze costs, revenues, rates, and quality of service, using such methodologies as the Commission shall by regulation prescribe, and in sufficient detail to demonstrate that all products during such year complied with all applicable requirements of [Title 39 of the United States Code].” *See* 39 U.S.C. § 3652(a)(1). [↑](#footnote-ref-3)
3. 39 C.F.R. § 3035.107(c) was issued pursuant to 39 U.S.C. § 3633(a)(3) and describes the appropriate share of institutional costs to be recovered from the Postal Service’s Competitive products collectively*.* *See* 39 U.S.C. § 3633(a)(3), (b) (requiring the Commission to “ensure that all competitive products collectively recover what the Commission determines to be an appropriate share of the institutional costs of the Postal Service”). However, while section 203 of the PSRA explicitly limits the Commission’s review to regulations issued pursuant to 39 U.S.C. §§ 3633(a) and 3652(a)(1), it also implicitly limits the Commission’s review to regulations involving cost attribution. Because 39 C.F.R. § 3035.107(c) relates to Competitive product contribution to the Postal Service’s institutional costs, not cost attribution, it falls outside the scope of the review required under section 203. [↑](#footnote-ref-4)
4. In implementing the Postal Reorganization Act, Pub. L. 91-375, 84 Stat. 719 (1970), the former Postal Rate Commission developed the two-tier approach to costing. That approach was upheld by the Supreme Court of the United States. *See* *Nat’l Ass’n of Greeting Card Publishers v. U.S. Postal Serv.*, 462 U.S. 810, 833 (1983) (specifically rejecting the imposition of an intermediary tier of costs, based on extended inferences of causation, between attributable and institutional costs). [↑](#footnote-ref-5)
5. Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3201, 3205 (2006); 39 U.S.C. §§ 3622(c)(2), 3631(b). The Senate Report explains:

   Over the history of the Postal Reorganization Act the ability to accurately attribute costs has continually evolved, and the Committee expects that…this process will continue. The current analysis has been guided by a Supreme Court decision, *National Assoc. of Greeting Card Publishers v. USPS*, 462 U.S. 810, 829-34 (1982), that carefully analyzed how the term attributable should be interpreted. This definition has been further refined by U.S. Courts of Appeals and is well understood in the industry. The NAGCP Court rejected a contention that it was appropriate to make classes responsible for the recovery of costs for which an extended inference of causation was claimed. It emphasized the need for reliable indicators of causality without specifying any specific method for identifying causality. … The Committee finds no reason for changing this standard.

   S. Rep. No. 108-318, at 9-10 (2004).

   The enactment of the PSRA did not disturb this two-tier approach. *See* Docket Nos. RM2017-1 and RM2022-2, Order Finalizing Rule Relating to the Institutional Cost Contribution Requirement for Competitive Products, January 9, 2023, at 37 n.40 (Order No. 6399). [↑](#footnote-ref-6)
6. *See* *generally* Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43). [↑](#footnote-ref-7)
7. *See generally* Docket No. RM2016-2, Order Concerning United Parcel Service, Inc.’s Proposed Changes to Postal Service Costing Methodologies (UPS Proposals One, Two, and Three), September 9, 2016 (Order No. 3506). [↑](#footnote-ref-8)
8. *See* Docket No. RM2022-1, Notice and Order of Proposed Rulemaking on Periodic Reporting, October 8, 2021 (Order No. 6004). [↑](#footnote-ref-9)
9. Order No. 6004 at 2-8. One of the cases discussed in Order No. 6004—Docket No. RM2020-9, in which the Commission denied a proposal to increase the level of peak season costs attributed to Competitive products—is currently the subject of appellate proceedings in the United States Court of Appeals for the District of Columbia Circuit. *See* Docket No. RM2020-9, Order Rejecting United Parcel Service, Inc.’s Proposed Changes to Postal Service Costing Methodologies (UPS Proposal One), November 29, 2021 (Order No. 6048); Docket No. RM2020-9, Order Denying United Parcel Service, Inc.’s Motion for Reconsideration of Order No. 6048, January 28, 2022 (Order No. 6097); Pet. for Review, *United Parcel Serv., Inc. v. Postal Regul. Comm’n*, No. 22-1029 (D.C. Cir. filed Feb. 25, 2022), ECF No. 1937117.

   For a summary of the Commission’s first strategic rulemaking proceeding, see Docket No. RM2011-3, Order Closing Docket, November 3, 2015 (Order No. 2798). [↑](#footnote-ref-10)