

NEGOTIATED SERVICE AGREEMENT (NSA) BACKGROUND INFORMATION

Market Dominant NSAs

Under 39 U.S.C 3622(c)(10) the Postal Service may enter into contracts “not of general applicability” for market dominant products. It requires NSAs to: (a) either improve the net financial position of the Postal Service, or enhance the performance of operational functions; and (b) not cause unreasonable harm to the marketplace. To this end, the Postal Service is required to file support showing that the prospective NSA meets these criteria.

If the NSA is a new product that needs to be added to the Product List, the Postal Service must also file support showing the new product meets the criteria in 39 U.S.C. 3642. This section provides a basis for determining whether a product is market dominant or competitive. Any product for which the Postal Service can set the price substantially above cost, raise the price significantly, decrease quality, or decrease output, without losing substantial business to other firms is a market dominant product. All other products are competitive. Section 3642 also requires the Commission to consider the availability of competition, the views of users of the product, and the impact of the proposed action on small businesses.

Upon receipt of an NSA proposal, the Commission establishes a docket, appoints a Public Representative to represent the interests of the general public, and provides an opportunity for public comment. If, after reviewing the Postal Service’s support and weighing the public comments, the Commission determines the NSA is consistent with 39 U.S.C. 3622, it promptly approves the Postal Service’s request, and, if applicable, adds the new NSA product to the market dominant Product List.

Since the enactment of the Postal Accountability and Enhancement Act, the Postal Service has submitted two market dominant NSAs, both with Canada Post for mail inbound to the United States. The second agreement is a renewal of the first.

Competitive NSAs

The Postal Accountability and Enhancement Act (PAEA) authorizes the Postal Service to execute NSAs establishing rates “not of general applicability” for domestic and international competitive products under 39 U.S.C. 3632(b)(3). There are two types of competitive NSAs:

(a) those representing a new product, and (b) those that are functionally equivalent to an existing competitive product.

If the NSA represents a new product, the Postal Service must file to add it to the Competitive Product List, pursuant to 39 U.S.C. 3642, which defines competitive products as all products, except those for which the Postal Service can set the price substantially above cost, raise the price significantly, decrease quality, or decrease output, without losing substantial business to other firms. The latter are deemed to be market dominant. Section 3642 also requires the Commission to consider the availability of competition, the views of users of the product, and the impact of the proposed action on small businesses.

If the NSA is functionally equivalent to an existing NSA, the Postal Service notice must be filed with the Commission at least 15 days prior to the effective date of the new rates.

Regardless of the type of competitive product filing made by the Postal Service, upon its receipt the Commission establishes a docket, appoints a Public Representative to represent the interests of the general public, and provides an opportunity for public comment. Based on a review of the Postal Service's filing and public comments, the Commission determines the lawfulness of the Postal Service's proposal under 39 U.S.C. 3633(a). New products approved are added to the Competitive Product List. Functionally equivalent NSAs approved are listed under the existing product and included in the Mail Classification Schedule.

Generally, the Commission issues a final determination on requests to add a new product to the Competitive Product List in less than 30 days, and 15 days or less for functionally equivalent NSAs.

Below is a table showing the status of contracts requested by the Postal Service and reviewed by the Commission for both domestic and international products from the passage of the PAEA to the present.

Negotiated Service Agreement Statistics:

As of April 9, 2010

	<u>FY 2008 Requested</u>	<u>FY2009 Requested</u>	<u>FY2010 Requested</u>	<u>Total USPS Requested</u>	<u>Total PRC Approved</u>	<u>Pending</u>
<u>PAEA COMPETITIVE NSAs</u>						
DOMESTIC (Each Contract is a Separate Product):						
Priority Mail Contracts	1	17	6	24	24	0
Express Mail Contracts	1	3	4	8	8	0
Express Mail and Priority Mail Contracts	0	8	0	8	8	0
Parcel Return Service Contracts	0	1	0	1	1	0
Parcel Select and Parcel Return Service Contracts	0	2	0	2	2	0
TOTAL Domestic	2	31	10	43	43	0
INTERNATIONAL (Each Group is a Separate Product):						
Direct Entry Parcels, International Return Service and Harmonization Service	0	1	0	1	1	0
Global Expedited Package Services 1	12	5	0	17	17	0
Global Expedited Package Services 2	0	10	17	27	23	4
Global Direct	0	4	2	6	6	0
Global Plus 1	2	2	0	4	4	0
Global Plus 2	2	2	0	4	4	0
Inbound Direct Entry with Foreign Postal Administrators	2	2	0	4	4	0
Inbound Express Mail International	0	1	0	1	1	0
Contractual Bilateral Agreement For Inbound Competitive Services	0	1	1	2	2	0
International Business Reply Mail Service Contract 1	0	2	1	3	3	0
International Business Reply Mail Service Contract 2	0	0	2	2	2	0
China Post	1	0	0	1	1	0
Royal Mail Inbound Air Parcel Post Agreement	0	1	0	1	1	0
Inbound International Expedited Services	0	1	1	2	2	0
Global Reseller Expedited Package Services	0	0	1	1	0	1
TOTAL International	19	32	25	76	71	5
TOTAL Competitive NSAs	21	63	35	119	114	5
<u>PAEA Market Dominant NSAs</u>						
INTERNATIONAL:						
Canada Post- Bilateral Agreement for Inbound Market Dominant Services	0	1	1	2	2	0
TOTAL Market Dominant NSAs	0	1	1	2	2	0