

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

George Omas, Chairman;
Dawn A. Tisdale, Vice Chairman;
Ruth Y. Goldway; and Tony Hammond

Rate and Service Changes To
Implement Baseline Negotiated
Service Agreement with Bookspan

Docket No. MC2005-3

NOTICE OF INQUIRY NO. 1
IN REGARD TO DOMESTIC MAIL CLASSIFICATION SCHEDULE
AND DATA COLLECTION PLAN LANGUAGE

(Issued November 3, 2005)

1. In its Request, the Postal Service proposed Domestic Mail Classification Schedule (DMCS) language describing Bookspan's mail eligible under the terms and conditions of the Negotiated Service Agreement.¹

620.1 Eligible Standard Mail

620.11 Bookspan

Eligible Standard Mail under this section is defined as letter shaped pieces sent by Bookspan for the purpose of soliciting book club membership of persons who are not current subscribers to the book club or clubs Bookspan is promoting in the mailing or to book club members whose membership is expiring. Such pieces may be sent by Bookspan, by entities in which Bookspan holds controlling shares, or by their vendors on their behalf. Such letters may include promotions of Bookspan's strategic business alliances.

¹ Request of the United States Postal Service for a Recommended Decision on Classifications and Rates to Implement a Baseline Negotiated Service Agreement With Bookspan, July 14, 2005 (Request), Attachment A.

The proposed DMCS language and the Negotiated Service Agreement contract both define mail eligible for mailing under the terms and conditions of the Negotiated Service Agreement.² Several interrogatories were posed which further clarify the definition of eligible mail.³ Because of perceived inconsistencies in what might be eligible for mailing under the agreement, the Presiding Officer asked questions to clarify the definition of eligible mail.⁴ The proponents also were asked to clarify whether or not the agreement is restricted to “Regular” Standard Mail.⁵

The sources described above were consulted to develop a more precise and accurate definition of eligible mail to be included in the DMCS. The revised, potential DMCS language below is followed by a sentence-by-sentence explanation describing the reasons for and citing the sources of the proposed modifications.

620.1 Eligible Standard Mail

620.11 Bookspan

Eligible Standard Mail under this section is defined as Standard Mail Regular letter-shaped pieces sent by Bookspan for the purpose of soliciting book club membership: (1) of persons who are not current subscribers to the book club or clubs Bookspan is promoting in the mailing; and (2) of book club members

² See Request, Attachment A, at 1; Request Attachment F, Section I.A and II.A; USPS-T2 at 1-2.

³ See, for example, NAA/USPS-T1-1 (response at Tr. 2/216), OCA/BOOKSPAN-T2-18 (response at Tr. 3/420), OCA/USPS-13 (response at Tr. 3/421-2), OCA/USPS-14 (response at Tr. 2/43), OCA/USPS-T1-10 (response at Tr. 3/464), OCA/USPS-T1-13 (response at Tr. 3/464-5), and OCA/USPS-T2-5 (response at Tr. 2/65).

⁴ Presiding Officer’s Information Request No. 1, July 26, 2005 (POIR No. 1), Question 4 (response at Tr. 3/424-5); and Presiding Officer’s Information Request No. 2, August 24, 2005 (POIR No. 2), Question 1 (responses at Tr. 2/262-5 and Tr. 3/427-9).

⁵ Presiding Officer’s Information Request No. 3, November 2, 2005 (POIR No. 3), Question 2 (response due November 9, 2005).

whose membership is expiring. Such pieces may be sent by Bookspan, by entities in which Bookspan holds controlling shares, or by their vendors on their behalf. Such pieces may include up to two inserts promoting Bookspan's strategic business alliances. Under no circumstances are periodic Current Member club mailings which offer the cycle's Featured Selection, as well as other club selections and offerings, eligible to be counted and receive discounts under the agreement, even if they contain solicitations to renew membership in that club or to join other clubs.

The following describes the reasons for the proposed modifications and cites to the source materials.

- a. *First sentence.* It is not clear from reading the first sentence as proposed in the Request whether the phrase "purpose of soliciting book club membership" only applies to "of persons who are not current subscribers to the book club or clubs Bookspan is promoting in the mailing" or if it also applies to "book club members whose membership is expiring." Witness Plunkett suggests that clarity might be improved by changing "to book club members whose membership is expiring" to "of book club members whose membership is expiring." Tr. 2/264. The first sentence is revised to clarify that all eligible mail must be for the purpose of soliciting book club membership, and to incorporate witness Plunkett's "to" to "of" suggestion.

The first sentence also refers to eligible mail as Standard Mail. On oral cross-examination witness Plunkett was asked: "And does your reference to standard mail in line five [of his written testimony] include reference to both standard regular and standard ACR[sic]?" As part of his response, witness Plunkett states: "Of course our agreement with Bookspan is standard mail regular." Tr. 2/293-4. Later, in a discussion about DMCS functionally equivalent language, witness Plunkett states: "I'm not sure there would be any standard mail ECR customers that would in any way

fall under this category. I can't say that absolutely, but. . . ." Although witness Plunkett was not prepared to commit to a change, he stated that he could not think of a reason why the Postal Service would strongly object to including the word "regular" in the functional equivalency language. Tr. 2/325-6. POIR No. 3, Question 2.a., filed on November 2, 2005, asks the proponents to confer and jointly clarify if their intent is to restrict eligible mail to Standard Regular letters, or if they also intend for Standard ECR letters to be eligible. The proponents' response (due November 9, 2005) and any participant's comments to this NOI will influence a final decision on whether or not to include the word "Regular" in the DMCS language.

- b. *Second sentence.* The second sentence remains as originally proposed by the Postal Service.

- c. *Third sentence.* The Postal Service proposes to modify the third sentence by replacing the words "promotions of" with "up to two inserts promoting."⁶ The proposal was made in response to concerns raised by a participant and discussed during settlement negotiations. The change limits the inclusion of materials promoting Bookspan's strategic alliances in solicitation letters eligible for discounts. The proposal to modify "promotions of" to "up to two inserts promoting" is incorporated into the third sentence of the revised language.

⁶ Notice of the United States Postal Service of Revised Attachment A to Request Containing Proposed DMCS Language, October 18, 2005.

- d. *Fourth sentence (not appearing in original).* POIR No. 2, Question 1.e seeks to understand under what circumstances Bookspan's cyclic Featured Selection mailings, which may contain solicitations to other book clubs, would qualify for mailing under the terms of the Negotiated Service Agreement. Witness Plunkett responds that "Under no circumstances are the periodic club mailings offering the cycle's Featured Selection as well as other club selections and offerings eligible to be counted and possibly receive discounts under the agreement, even if they contain solicitations to renew membership in that club or to join other clubs." Tr. 2/265.

Witness Epp complements witness Plunkett's response and furthers the definition of eligible mail when discussing periodic "Current Member" mailings in responses to several interrogatories.

Bookspan generates Standard Mail letters, flats and parcels. Bookspan Standard Mail flats and parcels are not eligible for discounts under the Negotiated Service Agreement. Bookspan's Standard Mail letter mail consists of Current Member letters, and New Member letters. What Bookspan means by 'Current Member' letters are the periodic advanced announcements of its book club selections. Current Member letters are not eligible for discounts under the Negotiated Service Agreement.

Tr. 3/428.

The primary purpose of a Current Member solicitation mailing (as that term is described in (b) above) is to offer the cycle's Featured Selection and other club selections and offerings to existing members. Such a mailing may include inserts promoting another Bookspan club; regardless, a Current Member mailing would not be eligible for the NSA discount.

Id. at 429.

A Current Member mailpiece includes a document announcing the cycle's Featured Selection and a catalog. It also may or may not include a cross-club promotion, an offer to enroll a friend, and/or a third party (i.e., strategic partner) insert.

Id. at 420.

The Postal Service response to 1(c) concerns membership solicitation letters sent to non-members of a particular club, separately and apart from any periodic, club-member, book-selection mailings. Such letters, if mailed under the appropriate permit, are eligible Standard Mail solicitation letters under the NSA, as are solicitations of membership sent to people who are not members of any Bookspan club. This definition excludes regular club mailings to members of that club for the purpose of offering periodic book selections.

Id. at 421-2.

Solicitation mailings eligible for discounts under the terms of this agreement will be mailed under separate, identified permits, as with previous NSAs. The current membership mailings will be prepared and entered under different permit numbers.

Tr. 2/43.

Witness Plunkett and Epp's responses clarify the eligibility of Bookspan's cyclic mailings under the agreement. Their responses are the bases of the fourth sentence added to the definition of Bookspan's eligible mail.

The Commission suggests the revised DMCS language to precisely and accurately reflect the constructs of the agreement, and the intent of the contracting parties. Participants are invited to comment on the accuracy of the revised DMCS language.

2. The Postal Service proposes additions to the DMCS relating to Negotiated Service Agreements (NSAs) that qualify as functionally equivalent to the currently proposed Bookspan NSA. In its initial Request, the Postal Service proposed inserting the following DMCS language:

620.12 Other Mailers

Functionally equivalent NSAs, involving declining block rates for Standard Mail letter solicitations for book or analogous club memberships, may be entered into with other customers demonstrating a similar or greater multiplier effect, as specified by the Postal Service, and implemented pursuant to proceedings under Chapter 36 of Title 39, of the United States Code.

Request, Attachment A, at 1. Interrogatory responses and oral testimony have clarified what a mailer needs to demonstrate to meet this test. Revised language to clarify this matter is offered as follows:

620.12 Other Mailers

Functionally equivalent NSAs, involving declining block rates for Standard Mail Regular letters for the purpose of acquiring customers for programs involving recurring mailings offering merchandise, may be entered into with other customers demonstrating a similar or greater multiplier effect and implemented pursuant to proceedings under Chapter 36 of Title 39, of the United States Code. For a mailer to have a similar or greater multiplier effect, at least six times per year, that mailer must send a continuing series of marketing mail, send products to a list of people who have agreed to purchase some stipulated minimum number of items on a more or less regular basis and use at least one other subclass for merchandise fulfillment.

These proposed changes from the original Postal Service Request can be broken down into five subparts, discussed below.

- a. *Limit to Standard Mail Regular letters.* This proposed change of the DMCS functionally equivalent language was taken from witness Plunkett's testimony, including his response to NAA/USPS-T1-8.a where he says, "I would expect that any mailer qualifying as functionally equivalent would be producing *Standard Mail Regular letters* for the purpose of acquiring customers." (emphasis added).⁷ Witness Plunkett also discussed limiting functionally equivalent agreements to "Standard Mail Regular" in his testimony at the hearing. See Tr. 2/294 ("Of course our agreement with Bookspan is standard mail regular."); Tr. 2/326 ("Q: As a policy witness here, would the Postal Service oppose or support inserting the word 'regular' in this language? A: I'd have to take that up with the people who worked in crafting this. I'm at a loss to think of a reason why we would object strongly. I haven't really given it much thought."). POIR No. 3, Question 2.a, filed on November 2, 2005, asks the proponents to confer and jointly clarify if their intent is to restrict eligible mail to Standard Regular letters, or if they also intend for Standard ECR letters to be eligible. The proponents' response (due November 9, 2005) and any participant's comments to this NOI will influence any final decision on whether or not to include the word "Regular" in the DMCS language.
- b. *Change "solicitations for book or analogous club memberships" to "for the purpose of acquiring customers for programs involving recurring mailings offering merchandise."* This proposed change of the DMCS functionally equivalent language was taken from witness Plunkett's revised interrogatory response to OCA/USPS-T2-6 which stated that "[i]n general, to be considered functionally equivalent, a mailer would need to send Standard Mail letters *for the purpose of acquiring customers for programs*

⁷ Tr. 2/223. See also witness Plunkett's response to VP/USPS-T1-2 stating: "On the other hand, there may be other customers who employ Standard Mail Regular as an acquisition medium that generate other types of multiplier effects." *Id.* at 270.

involving recurring mailings offering merchandise.” (emphasis added).⁸

Witness Plunkett’s clarification better describes the potential functionally equivalent mailer’s behavior than the originally proposed DMCS language.

- c. *Addition of “at least six times per year, that mailer must send a continuing series of marketing mail.”* This proposed change to the DMCS functionally equivalent language was taken from witness Plunkett’s revised interrogatory response to OCA/USPS-T2-6 which stated that “[s]uch programs would typically be continuity or negative option memberships of indefinite duration, *with the mailer sending a continuing series of marketing mail at least 6 times per year.*” (emphasis added). Placing this clarifying language from witness Plunkett’s revised interrogatory response into the DMCS allows potential NSA partners to have a better understanding of whether they could qualify as functionally equivalent.
- d. *Addition of “send products to a list of people who have agreed to purchase some stipulated minimum number of items on a more or less regular basis.”* This proposed change to the DMCS functionally equivalent language was taken from witness Plunkett’s revised interrogatory response to VP-USPS-T1-2. *Id.* at 270. In the interrogatory, “continuity

⁸ Revised Response of Postal Service Witness Plunkett to Interrogatory of the Office of the Consumer Advocate Redirected from Witness Yorgey (OCA/USPS-T2-6), October 18, 2005, at 3. This revised response was not made part of the record. Tr. 2/211. Several participants objected to the substitution of this revised response in place of the original response provided by witness Plunkett. Tr. 2/207-11. The objections were based upon the inclusion of a spreadsheet which attempted to quantify Bookspan’s multiplier effect. *Ibid.* The objectors were concerned that the Postal Service was now attempting to change its testimony and rely upon the multiplier effect in its analysis of the NSA. *Ibid.* OCA objected to the spreadsheet being included, but sought to have the “...new standards for evaluating functional equivalents that we would like in the record.” *Id.* at 209. The Presiding Officer ruled that the revised response would not be made part of the record and “...we’ll let you orally cross-examine.” *Id.* at 211. Some questions exploring the standards for evaluating functional equivalency were asked during oral cross-examination, but not to the level of detail discussed in the revised response. *Id.* at 337-38. In order for the Commission to recommend DMCS language, it needs to know if this revised response reflects what the Postal Service believes and intends with respect to potential functionally equivalent NSAs.

shippers” were defined as a mailer that “regularly sends products to a list of people who have agreed to purchase some stipulated minimum number of items ... on a more or less regular basis.” Witness Plunkett’s response stated that “[b]ased on the definition of continuity shipper supplied in this interrogatory, it appears likely that continuity shippers would generally qualify as functionally equivalent” Placing this clarifying language from witness Plunkett’s interrogatory response into the DMCS allows potential NSA partners to better understand whether they could qualify as functionally equivalent.

- e. *Addition of “use at least one other subclass for merchandise fulfillment.”*
- This proposed change of the DMCS functionally equivalent language was taken from witness Plunkett’s revised interrogatory response to OCA/USPS-T2-6 which stated that “[s]uch programs would typically be continuity or negative option memberships of indefinite duration, *with the mailer ... using at least one other subclass for merchandise fulfillment.*” (emphasis added). Placing this clarifying language from witness Plunkett’s revised interrogatory response into the DMCS allows potential NSA partners to better understand whether they could qualify as functionally equivalent.

Placing this or similar clarifying language from the Postal Service’s interrogatory responses into the DMCS allows potential NSA partners to know in advance and have a better idea at the outset whether they might qualify for a functionally equivalent NSA rather than making the process unfairly subjective under an “as specified by the Postal Service” standard. Accordingly, the Commission invites participants to comment on each of the proposed changes discussed in the subparts above.

3. The following Data Collection Plan is proposed by the Postal Service:

USPS-T-2
Appendix E
Proposed Data Collection Plan
(REVISED 10/18/05)

The USPS plans to collect the following data pertaining to the NSA with Bookspan:

1. The volume of solicitation Standard Mail letter-size and Flat-size (non-letter) by rate category in eligible Bookspan account;
2. The amount of discounts paid to Bookspan for solicitation Standard Mail letter-size by incremental volume block;
3. Monthly estimates of the amount of time spend on compliance activity and a description of the activities performed.

As part of each data collection plan report, the USPS will provide an evaluation of the impact on contribution.

In addition, the Postal Service will provide a narrative comparison of Bookspan's actual volumes by rate category with:

- Before rates forecast
- After rates forecast
- Subclass averages
- Relevant benchmarks (such as book companies, publishers, negative option customers) based on research using available and/or commissioned sources where possible.

This will include an analysis of any significant exogenous impacts, e.g. Hurricane Katrina.

An annual report of the data collected and the information analyzed will be provided to the Commission yearly within 120 days of the NSA anniversary date.

The Commission seeks comments on potential modifications to the Data Collection Plan as set out below:

The data collection and reporting required during the Negotiated Service Agreement are set out below:

1. The volume of solicitation Standard Mail letter-size by rate category in eligible Bookspan accounts; and flat-size (nonletter) mail that would be eligible if mailed as letters, also by rate category. The volumes provided should be comparable to those provided by witness Epp (Bookspan-T-2) in his forecast.
2. The amount of discounts paid to Bookspan for solicitation Standard Mail letter-size by incremental volume block.
3. Monthly estimates of the amount of time spent on compliance activity and a description of the activities performed.
4. A comparison of the estimated mailer-specific costs and revenues with the actual mailer-specific costs and revenues.
5. As part of each data collection plan report, the Postal Service will provide an evaluation of the impact of the agreement on contribution.
6. In addition, the Postal Service will provide a narrative comparison of Bookspan's actual volumes by rate category with:
 - a. Before rates forecast
 - b. After rates forecast
 - c. Subclass totals

- d. Relevant benchmarks (such as book companies, publishers, negative option customers) based on research using available and/or commissioned sources where possible.

This will include an analysis of any significant exogenous impacts, e.g., Hurricane Katrina.

An annual report of the data collected and the information analyzed will be provided to the Commission yearly within 120 days of the NSA anniversary date. Items 1 and 3 are to be reported as monthly data for the previous year of the agreement. The Postal Service shall provide the data in a PC-available format.

This modified version incorporates several changes, all of which make it more consistent with the data collection requirements of previously approved Negotiated Service Agreements. Each item is numbered to allow the Postal Service and parties to easily identify each item within the reports. Item 4 has been added to allow for the evaluation of the accuracy of proxies and forecasts used in the Postal Service's analysis, and to measure the improvement in accuracy as the Postal Service gains experience with Negotiated Service Agreements.

Item 6c is changed because "Subclass totals" seems more appropriate than "Subclass averages." The phrase "of the agreement" is added to item 5 to clarify its intent. Item 1 has been modified to recognize that flat-size (nonletter) Standard Mail is not eligible under the terms of the agreement. Also in item 1, the word "flat-size" is not capitalized because it is not a proper noun.

The requirements specify that Bookspan's mail volumes and time spent on compliance activity are to be reported as monthly data. This will allow for consistent comparisons with historical volume data and improved trend analysis. Also, the data is to be provided in a PC-available format. This will facilitate further analysis using the collected data.

Participants are invited to submit comments on the three questions presented above on or before November 14, 2005. Reply comments may be submitted on or before November 21, 2005.

By the Commission.

(S E A L)

Steven W. Williams
Secretary