

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

Before Commissioners:

Robert G. Taub, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Competitive Product Prices
Priority Mail & First-Class Package Service Contract 62
(MC2018-28)
Negotiated Service Agreements

Docket No. CP2018-54

ORDER APPROVING AMENDMENT ONE TO PRIORITY MAIL & FIRST-CLASS
PACKAGE SERVICE NEGOTIATED SERVICE AGREEMENT

(Issued January 9, 2019)

I. INTRODUCTION

The Postal Service seeks to amend a Priority Mail & First-Class Package Service negotiated service agreement.¹ For the reasons discussed below, the Commission approves the Amendment.

In Order No. 4246, the Commission approved the Priority Mail & First-Class Package Service Contract 62 negotiated service agreement (Existing Agreement).² On

¹ USPS Notice of Amendment to Priority Mail & First-Class Package Service Contract 62, Filed Under Seal, December 28, 2018 (Notice). The amendment is an attachment to the Notice (Amendment).

² See Docket Nos. MC2018-28 and CP2018-54, Order Adding Priority Mail & First-Class Package Service Contract 62 to the Competitive Product List, November 29, 2017 (Order No. 4246).

December 28, 2018, the Postal Service filed notice that it has agreed to the Amendment to the Existing Agreement.

The Commission was unable to issue its customary notice reopening the docket, appointing a Public Representative, and providing interested persons with an opportunity to comment due to the lapse in federal appropriation, which precluded the Commission from publishing in the *Federal Register*. This does not preclude the Commission from issuing this final order.³ A Public Representative was appointed internally.

The Postal Service intends for the Amendment to become effective two business days after the date that the Commission completes its review of the Notice. Notice at 1. The Postal Service filed supporting financial documentation and a certified statement, as required by 39 C.F.R. § 3015.5. *Id.*

II. COMMENTS

Comments were filed by the Public Representative.⁴ No other person submitted comments. The Public Representative reviewed the Existing Agreement, and the financial model filed under seal. PR Comments at 1. Based on that review, he concludes that the Existing Agreement, as amended, should continue to generate sufficient revenue to cover costs and satisfy 39 U.S.C. § 3633(a). *Id.*

³ Although 39 C.F.R. § 3020.33 indicates the Commission will publish notice in the *Federal Register* and on its website, the Commission may relax its own procedural rules where they are “aids to the exercise of the agency’s independent discretion” rather than grants of “important procedural benefits.” *Am. Farm Lines v. Black Ball Freight Serv.*, 397 U.S. 532, 539 (1970); accord *Leslie v. Att’y Gen. of the U.S.*, 611 F.3d 171, 175-81 (3d Cir. 2010) (examining an agency’s authority to depart from its promulgated regulations).

⁴ Public Representative Comments on Postal Service Notice of Amendment to Priority Mail & First-Class Package Service Contract 62, January 4, 2019 (PR Comments).

III. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the accompanying materials filed under seal, and the comments filed by the Public Representative.

Cost considerations. The Commission reviews competitive product prices to ensure that each product covers its attributable costs, does not cause market dominant products to subsidize competitive products, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the product exceeds its attributable costs, the product is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if a product covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

The Amendment revises the negotiated rates as well as the implementation of tiered pricing. Notice, Attachment A at 2-4. The Amendment also adds a new provision related to record-keeping. *Id.* at 4.

Based on a review of the record, the Commission finds that the Existing Agreement, as amended, should cover its attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, it finds that the Existing Agreement, as amended, should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, it finds the Existing Agreement, as amended, is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c). Accordingly, a preliminary review of the Amendment indicates it is consistent with section 3633(a). The Commission will continue to review the cost coverage of the Existing Agreement, as amended, in its Annual Compliance Determination to ensure that rates cover costs.

Other considerations. The Postal Service states that the Amendment shall become effective two business days after the date that the Commission completes its review. Notice at 1.

If the Existing Agreement, as amended, is terminated prior to the scheduled expiration date, the Postal Service shall promptly notify the Commission.

In conclusion, the Commission approves the Existing Agreement, as amended.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the Priority Mail & First-Class Package Service Contract 62 negotiated service agreement, as amended.
2. The Postal Service shall notify the Commission if the Existing Agreement, as amended, terminates prior to the scheduled expiration date.

By the Commission.

Stacy L. Ruble
Secretary