

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

Before Commissioners:

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

Market Dominant Product Prices  
Inbound Market Dominant Non-Published Rate  
Agreements with Foreign Postal Operators

Docket No. MC2019-187

Market-Dominant Product Prices  
Inbound Market Dominant Non-Published Rate  
Agreements with Foreign Postal Operators (MC2019-187)  
Negotiated Service Agreements

Docket No. R2019-2

ORDER REGARDING POSTAL SERVICE REQUEST TO ADD INBOUND MARKET  
DOMINANT NON-PUBLISHED RATE AGREEMENTS WITH FOREIGN POSTAL  
OPERATORS (MC2019-187) NEGOTIATED SERVICE AGREEMENTS

(Issued September 10, 2019)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Inbound Market Dominant Non-Published Rate Agreements with Foreign Postal Operators (Inbound

Market Dominant NPR-FPO) to the market dominant product list.<sup>1</sup> The Postal Service also provides notice, pursuant to 39 C.F.R. § 3010.40-.44, of a Type 2 rate adjustment, in the form of an Inbound Market Dominant NPR-FPO 1 model contract. Request at 1; see *id.* Attachment 4 (Model Contract).

The Postal Service asks for expeditious review of the Request. *Id.* In its expedited review, the Commission has identified multiple deficiencies that must be resolved in order for the Postal Service to demonstrate that the Inbound Market Dominant NPR-FPO product and the Model Contract comply with the applicable statutory and regulatory requirements.

Under the applicable statutory and regulatory requirements, the Commission cannot approve a negotiated service agreement (NSA) for a market dominant product if the Postal Service fails to demonstrate that the NSA will either: (1) improve the net financial position of the Postal Service through reducing costs or increasing the overall contribution to institutional costs; or (2) enhance the performance of mail preparation, processing, transportation, or other functions. 39 U.S.C. § 3622(c)(10)(A); see 39 C.F.R. § 3010.40(a). The Postal Service maintains the Inbound Market Dominant NPR-FPO product “will enhance the performance of mail preparation, processing, transportation and other functions because . . . it will provide the Postal Service with an efficient and effective means of ensuring its continued ability to exchange inbound letter post letters and flats with foreign postal operators in the event the United States withdraws from the [Universal Postal Union (UPU)].” Request at 6-7.

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<sup>1</sup> Request of United States Postal Service to Add Inbound Market Dominant Non-Published Rate Agreements with Foreign Postal Operators to the Market Dominant Product List, Notice of a Type 2 Rate Adjustment in the Form of an Inbound Market Dominant NPR-FPO 1 Model Contract, and Application for Non-Public Treatment of Materials Filed Under Seal, August 14, 2019 (Request). On September 5, 2019, the Postal Service filed an errata to its Request that revised the Model Contract. Notice of the United States Postal Service of Filing Errata to Request of United States Postal Service to Add Inbound Market Dominant Non-Published Rate Agreements with Foreign Postal Operators to the Market Dominant Product List, Notice of a Type 2 Rate Adjustment in the Form of an Inbound Market Dominant NPR-FPO 1 Model Contract, and Application for Non-Public Treatment of Materials Filed Under Seal, September 5, 2019.

Although the Postal Accountability and Enhancement Act (PAEA) granted new flexibility to the Postal Service in setting postal prices, it also made clear that only market dominant NSAs that improve the net financial position of the Postal Service or enhance the performance of certain postal operations may be approved. These statutory limitations protect the public and other mailers. Because the Postal Service fails to demonstrate that the proposed product complies with the applicable statutory and regulatory requirements, the Commission cannot approve the Request at this time.

As explained in more detail below, the Request does not identify each component of the Model Contract expected to enhance the performance of mail preparation, processing, transportation, or other functions or discuss the nature and expected impact of each such enhancement. See 39 C.F.R. § 3010.42(g). The Commission also identifies additional deficiencies that should be addressed if the Postal Service elects to amend or supplement its Request to add the Inbound Market Dominant NPR-FPO product to the market dominant product list and the Model Contract to that product.

The Commission appreciates the Postal Service's efforts to ensure that it continues to be able to receive inbound international mail if the United States withdraws from the UPU. As further detailed below, the Commission has already approved the entry of this mail at the current terminal dues.<sup>2</sup> As a result, the Commission determines that the proposed NSA is not necessary for continued entry of inbound market dominant mail at current terminal dues. If the Postal Service chooses to pursue different prices for the remainder of Calendar Year (CY) 2019 or CY 2020, it can propose changing the generally applicable rates for Inbound Letter Post or request Commission approval for NSAs with foreign postal operators.

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<sup>2</sup> Docket No. R2019-1, Order on Price Adjustments for First-Class Mail, USPS Marketing Mail, Periodicals, Package Services, and Special Services Products and Related Mail Classification Changes, November 13, 2018, at 19, 61 (Order No. 4875).

## II. BACKGROUND

### A. Inbound Letter Post

UPU member countries negotiated default prices, called terminal dues, for the acceptance, processing, and delivery of Inbound Letter Post at the 2016 UPU Congress.<sup>3</sup> The Commission has expressed repeated concerns related to the UPU terminal dues system and noted that the current pricing regime results in noncompensatory terminal dues.<sup>4</sup> Additionally, the Commission has described UPU terminal dues as discriminatory because they are not equivalent to domestic postage rates in the destination country.<sup>5</sup>

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<sup>3</sup> See Universal Postal Convention, Articles 28-30 (adopted by the 2016 Universal Postal Union Congress), *available at*: [http://www.upu.int/uploads/tx\\_sbdownloader/actsActsOfThe26ThCongressIstanbul2016En.pdf](http://www.upu.int/uploads/tx_sbdownloader/actsActsOfThe26ThCongressIstanbul2016En.pdf) (UPU Convention).

<sup>4</sup> Docket No. ACR2018, Annual Compliance Determination, April 12, 2019, at 84-85 (FY 2018 ACD); Docket No. ACR2017, Annual Compliance Determination, March 29, 2018, at 68 (FY 2017 ACD); Docket No. ACR2016, Annual Compliance Determination, March 28, 2016, at 66 (FY 2016 ACD); Docket No. ACR2015, Annual Compliance Determination, March 28, 2016, at 70 (FY 2015 ACD); Docket No. ACR2014, Annual Compliance Determination, March 27, 2015, at 53; Docket No. ACR2013, Annual Compliance Determination, March 27, 2014, at 59; Docket No. ACR2012, Annual Compliance Determination, March 28, 2013, at 143; Docket No. ACR2011, Annual Compliance Determination, March 28, 2012, at 143-144; Docket No. ACR2010, Annual Compliance Determination, March 29, 2011, at 130-131; Docket No. ACR2009, Annual Compliance Determination, March 29, 2010, at 108-109; Docket No. ACR2008, Annual Compliance Determination, March 30, 2009, at 81; Docket No. ACR2007, Annual Compliance Determination, March 27, 2008, at 115, 118.

<sup>5</sup> FY 2018 ACD at 85; FY 2017 ACD at 68; FY 2016 ACD at 66; FY 2015 ACD at 70.

On August 23, 2018, President Donald J. Trump issued a presidential memorandum to the Postmaster General and the Chairman of the Commission, among others, entitled “Modernizing the Monetary Reimbursement Model for the Delivery of Goods Through the International Postal System and Enhancing the Security and Safety of International Mail.”<sup>6</sup> The Presidential Memorandum notes that the current terminal dues system does not “align with United States economic and national security interests[.]” Presidential Memorandum § 2(c). Specifically, the Presidential Memorandum maintains that the current terminal dues system “distorts the flow of small packages around the world by incentivizing the shipping of goods from foreign countries that benefit from artificially low reimbursement rates.” *Id.* § 2(c)(i)(C). The Presidential Memorandum directed the Secretary of State to seek agreement to reform the UPU terminal dues system so that the prices are consistent with the policies outlined in the Presidential Memorandum. *Id.* § 4(b).

Following the Second UPU Extraordinary Congress in 2018, the Department of State reported that there was insufficient progress made to reform the terminal dues system in line with the policies outlined in the Presidential Memorandum.<sup>7</sup> On October 17, 2018, the White House announced that the President concurred with the Department of State’s recommendation that the United States should adopt self-declared rates for terminal dues as soon as practical, but no later than January 1, 2020. See Press Secretary Statement. Also, on the same day, the Secretary of State notified the UPU that the United States would withdraw as a member country, effective one year from the announcement. *Id.* The White House announcement stated that the

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<sup>6</sup> Presidential Memorandum for the Secretary of State, Secretary of the Treasury, Secretary of Homeland Security, Postmaster General, and Chairman of the Postal Regulatory Commission, August 23, 2018, available at: <https://www.whitehouse.gov/presidential-actions/presidential-memorandum-secretary-state-secretary-treasury-secretary-homeland-security-postmaster-general-chairman-postal-regulatory-commission/> (Presidential Memorandum).

<sup>7</sup> Statement from the Press Secretary, October 17, 2018, available at: <http://www.whitehouse.gov/briefings-statements/statement-press-secretary-38/> (Press Secretary Statement).

Department of State will seek to negotiate bilateral and multilateral agreements that resolve the problems identified in the Presidential Memorandum. *Id.* It noted that “[i]f negotiations are successful, the Administration is prepared to rescind the notice of withdrawal and remain in the UPU.” *Id.*

In Docket No. MC2019-17, the Postal Service requested the transfer of Inbound Letter Post small packets and bulky letters and associated inbound registered mail services from the market dominant to competitive product list.<sup>8</sup> The Commission conditionally approved the transfer pending the proposal, review, approval, and implementation of new prices for the Inbound Letter Post Small Packets and Bulky Letters product and associated International Registered Mail service.<sup>9</sup> In addition, the Commission conditionally approved revisions to the Mail Classification Schedule (MCS), that not only took into account the transfer of small packets and bulky letters from the market dominant Inbound Letter Post product to the competitive Inbound Letter Post Small Packets and Bulky Letters product, but also the potential withdrawal of the United States from the UPU. Order No. 4980 at 26-27.

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<sup>8</sup> See *generally* Docket No. MC2019-17, United States Postal Service Request to Transfer Inbound Letter Post Small Packets and Bulky Letters, and Inbound Registered Service Associated with Such Items, to the Competitive Product List, November 16, 2018 (Docket No. MC2019-17 Transfer Request).

<sup>9</sup> Docket No. MC2019-17, Order Conditionally Approving Transfer, January 9, 2019, at 19, 23 (Order No. 4890).

## B. Procedural History

Pursuant to 39 U.S.C. §§ 3622 and 3642, and 39 C.F.R. parts 3010 and 3020, the Postal Service filed a request to add the Inbound Market Dominant NPR-FPO product to the market dominant product list.<sup>10</sup> The Commission gave notice of the two dockets, appointed a Public Representative, and provided the public with an opportunity to comment.<sup>11</sup> On August 27, 2019, the Public Representative requested the issuance of information requests to obtain additional clarifying information.<sup>12</sup> On September 5, 2019, the Public Representative provided comments.<sup>13</sup>

## C. Postal Service's Request

The Postal Service states that the Inbound Market Dominant NPR-FPO product conforms to the policies of the PAEA and meets the statutory standards supporting the desirability of special classifications under 39 U.S.C. § 3622(c)(10). Request at 6-9, 11.

The Postal Service asserts the Inbound Market Dominant NPR-FPO product will “enable[e] the Postal Service to continue exchanging inbound letter post letters and flats in an effective and efficient fashion . . . even if the United States leaves the UPU[.]” *Id.* at 2. The Postal Service states that the intended contract period is October 2019 through December 2020, with two separate time periods within that contract period: October 2019 through December 2019, and CY 2020. *Id.* at 5. The Postal Service

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<sup>10</sup> Request at 1. In support of its Request, the Postal Service filed management analysis of the proposed prices and methodology for determining those prices (Attachment 2B) and a financial model; a copy of the model contract (Attachment 4); proposed descriptive language changes to the Mail Classification Schedule (Attachment 2A); a proposed data collection plan; and a statement of supporting justification as required by 39 C.F.R. § 3020.32 (Attachment 3), which the Postal Service also asserts satisfies the requirements of 39 C.F.R. § 3010.42(b)-(e).

<sup>11</sup> Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, August 15, 2019.

<sup>12</sup> Public Representative Motion to Request Issuance of Information Request, August 27, 2019 (Motion).

<sup>13</sup> Public Representative Comments, September 5, 2019 (PR Comments).

notes that, for these separate time periods, the Model Contract proposes different rates for Inbound Letter Post letters and flats, Inbound Letter Post Registered Fees, and Inbound Letter Post Transit Fees. *Id.* The Postal Service indicates that the proposed rates will “reflect the existing 2019 UPU rates for the October through December 2019 period, and the 2020 UPU rates for the 2020 calendar year period.” *Id.* Attachment 2B at 2. The Postal Service notes that rates for Inbound Letter Post small packets and bulky letters will be included under this product for October 2019 to December 2019.<sup>14</sup>

The planned implementation date of the Inbound Market Dominant NPR-FPO product is October 1, 2019, but only if the United States has not rescinded, revoked, or deferred until a later date its October 2018 notice that it plans to withdraw from the UPU effective October 17, 2019. *Id.* at 4; Model Contract at 2. The Model Contract contains an implementation date (October 1, 2019, or on a date mutually agreed upon by the Postal Service and the foreign postal operator), and will expire on December 31, 2020, unless otherwise terminated pursuant to the provisions of the agreement. *Id.* at 7. The Model Contract contains a termination clause, granting either the Postal Service or the foreign postal operator the right to terminate the agreement without cause upon 90 days advance written notice. *Id.* at 3.

#### D. Comments

On September 5, 2019, the Public Representative provided comments.<sup>15</sup> In her comments, the Public Representative states that there is insufficient information to determine whether the proposed Inbound Market Dominant NPR-FPO product satisfies the applicable statutory and regulatory requirements. PR Comments at 2. Specifically, although the Postal Service lists benefits of the Inbound Market Dominant NPR-FPO

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<sup>14</sup> Request at 5-6; *id.* at 6 n.3.

<sup>15</sup> The Public Representative also provides notice that she filed an unredacted version of her comments under seal. See Notice of the Public Representative of Filing of Materials Under Seal, September 5, 2019.

product, she notes that the Postal Service provides “no discussion, documentation, or analysis to support these identified benefits.” *Id.* at 5. She states that because the Request does not provide sufficient detail to demonstrate that the agreements will enhance postal operations, she cannot conclude that the proposed Inbound Market Dominant NPR-FPO product meets the requirements of 39 U.S.C. § 3622(c)(10)(A)(ii). *Id.* at 6.

The Public Representative also calls attention to other issues associated with the Request. She states that the Postal Service’s request to use the non-published rates process, which allows the Postal Service to add new agreements to the product without prior Commission approval, is inappropriate for these agreements. *Id.* at 6-7. She posits that because the Inbound Market Dominant NPR-FPO product, unlike products for which the non-published rate process have been approved, does not have a history of repeatedly and routinely satisfying the applicable statutory and regulatory requirements, it is inappropriate to apply the non-published rates process to the proposed product. *Id.* at 7. Accordingly, she asserts that it is inappropriate to approve the use of the non-published rate process in this proceeding. *Id.* Furthermore, the Public Representative states that because the Postal Service anticipates variations among the signed Inbound Market Dominant NPR-FPO 1 agreements but does not identify the potential variations, the non-published rate process is not appropriate. *Id.*

Second, the Public Representative suggests that the Commission consider the implications of approving the Request on future market dominant rate adjustments. *Id.* at 8. She states that it appears that the Request proposes to replace Inbound Letter Post rates, which are rates of general applicability, with the proposed Inbound Market Dominant NPR-FPO rates, which are rates not of general applicability. *Id.* She notes that she requested clarification of the Request’s impact on future market dominant rate adjustments. *Id.*

Third, the Public Representative expresses concern regarding the Postal Service’s proposed data collection plan. *Id.* Specifically, she states that the Postal

Service did not indicate what data it intends to file with the Commission. *Id.* She suggests that the Commission develop detailed reporting requirements if it approves the Request. *Id.*

### III. COMMISSION ANALYSIS

#### A. Existing Authorization to Accept Entry of Inbound Letter Post Mailpieces

The Postal Service asserts that approval of the Request would enable “the Postal Service to continue exchanging inbound letter post letters and flats in an effective and efficient fashion . . . even if the United States leaves the UPU.” Request at 2. However, the Commission has already approved prices for the Inbound Letter Post product. As a result, the Postal Service is able to enter into bilateral and multilateral agreements under 39 U.S.C. § 407(d) for the acceptance, processing, and delivery of Inbound Letter Post mailpieces at those approved prices. Should the Postal Service need to adjust prices for the Inbound Letter Post product, it may do so in accordance with 39 C.F.R. part 3010.

To allow for the Postal Service’s entry into bilateral and multilateral agreements for Inbound Letter Post mailpieces, a change in the implementation date for already conditionally approved revisions to the Mail Classification Schedule (MCS) is needed. In Order No. 4980, the Commission conditionally approved MCS revisions that not only took into account the transfer of inbound small packets and bulky letters from the market dominant Inbound Letter Post product to the competitive Inbound Letter Post Small Packets and Bulky Letters product, but also the potential withdrawal of the United States from the UPU. The Postal Service indicates that the proposed implementation date of the conditionally approved transfer is January 1, 2020.<sup>16</sup> However, the United States gave notice that it intends to withdraw from the UPU effective October 17, 2019. See Press Secretary Statement. Accordingly, there is potential for the United States to

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<sup>16</sup> Request at 5-6; *id.* at 6 n.3.

withdraw from the UPU before Inbound Letter Post small packets and bulky letters transfer to the competitive product list.

Because the Commission has conditionally approved MCS language that accounts for the withdrawal of the United States from the UPU, the MCS revisions conditionally approved in Order No. 4980 shall become effective in two steps. First, the conditionally approved revisions to Inbound Letter Post product description and pricing sections (MCS §§ 1130.1, 1130.4, and 1130.6) to remove references to the UPU will become effective when the United States withdraws from the UPU. Second, the remainder of the MCS revisions approved in Order No. 4980 will go into effect once the provisionally approved transfer of Inbound Letter Post small packets and bulky letters to the competitive product list occurs.<sup>17</sup>

With this change, the Postal Service is authorized to enter into bilateral and multilateral agreements under 39 U.S.C. § 407(d) for the acceptance, processing, and delivery of Inbound Letter Post mailpieces at approved prices. This enables the Postal Service to continue exchanging Inbound Letter Post mailpieces without approval of the instant Request.

#### B. Compliance with Applicable Statutes and Regulations

As previously discussed in Section I above, the Commission is unable to approve the Request because the Postal Service fails to demonstrate that the Inbound Market Dominant NPR-FPO product and the Model Contract comply with the applicable statutory and regulatory requirements. The Postal Service attempts to justify the statutory compliance of the Request by asserting that the “agreements will enhance the performance of mail preparation, processing, transportation and other functions[.]” Request at 6-7. Thus, the Commission is tasked with evaluating whether the Postal

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<sup>17</sup> If the United States does not withdraw from the UPU, then the conditionally approved revisions to the MCS will become effective once the conditionally approved transfer of Inbound Letter Post small packets and bulky letters to the competitive product list occurs.

Service has demonstrated that the Inbound Market Dominant NPR-FPO product satisfies the statutory test of 39 U.S.C. § 3622(c)(10)(A)(ii).

To ensure that it is able to analyze this issue, the Commission's regulations require the Postal Service to "identif[y] . . . each component of the agreement expected to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement, and [discuss the] nature and expected impact of each such enhancement[.]" 39 C.F.R. § 3010.42(g). Additionally, the regulations require that the Postal Service includes a detailed plan for providing data or information to the Commission that is sufficient for the Commission to evaluate whether the agreement operates in compliance with 39 U.S.C. § 3622(c)(10) once the agreement is implemented. 39 C.F.R. § 3010.43.

The Request did not provide sufficient information for the Commission to determine that the proposed product and model contract comply with applicable statutory and regulatory requirements. Furthermore, there are additional issues that the Postal Service must address before the Commission can approve its request to add the Inbound Market Dominant NPR-FPO product to the market dominant product list and before adding the Model Contract to that product.

#### 1. Enhancement to Operational Functions

The PAEA granted new flexibility to the Postal Service in setting postal prices. It permits the Postal Service to establish a market dominant NSA if that NSA improves the net financial position of the Postal Service or enhances the performance of certain postal operations. 39 U.S.C. § 3622(c)(10)(A). The Postal Service does not claim that the Inbound Market Dominant NPR-FPO product improves its net financial position, but instead states that the NSA will "enabl[e] the Postal Service to continue exchanging inbound letter post letters and flats in an effective and efficient fashion based on these terms even if the United States leaves the UPU[.]" Request at 2. The Postal Service asserts that ensuring the continued exchange of letters and flats has specific benefits;

including: standardized mail preparation, documentation requirements and processing procedures; practices that facilitate exchange, settlement, and payment for international mail; efficiencies related to having a single-point of contact as opposed to working with foreign mailers and companies; and terms for the exchange of advanced electronic data. *Id.* at 6-9. However, as the Public Representative observes, the Postal Service does not provide any analysis to support its claim that the Inbound Market Dominant NPR-FPO product will enhance the Postal Service's operational functions. See PR Comments at 5.

Furthermore, the Postal Service does not describe what the *status quo* would be absent the Inbound Market Dominant NPR-FPO product. For example, as discussed above, if there is a bilateral agreement between the Postal Service and a foreign postal operator at approved Inbound Letter Post prices, it appears that the Postal Service could accept, process, and deliver Inbound Letter Post mailpieces from that foreign postal operator, notwithstanding the United States' withdrawal from the UPU. The Postal Service does not state how the proposed Inbound Market Dominant NPR-FPO product will enhance operations compared to the existing operational practices under the Inbound Letter Post product. It appears that the specific benefits identified in the Request exist under the UPU framework and agreements to share advanced electronic data. Therefore, it is unclear how the Inbound Market Dominant NPR-FPO product will "enhance the performance of mail preparation, processing, transportation and other functions[.]" as the Postal Service alleges. See Request at 6-7.

Moreover, the Postal Service does not explain what would happen to an inbound market dominant mailpiece from a foreign postal operator with which the Postal Service does not have a bilateral agreement after the United States withdraws from the UPU. For example, currently, the Postal Service receives inbound international mail from

freight forwarders and mail consolidators.<sup>18</sup> The Postal Service treats these mailpieces as domestic mailpieces once they enter the postal system.<sup>19</sup> Under this practice, freight forwarders and mail consolidators currently pay domestic rates for the acceptance, processing, and delivery of these mailpieces, all of which originate outside the United States. The Postal Service does not address whether absent the Inbound Market Dominant NPR-FPO product, foreign postal operators would be able to continue to enter inbound market dominant mailpieces in this manner.

## 2. Data Plan

The Commission requires the Postal Service to include a “detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. § 3622(c)(10).” 39 C.F.R. § 3010.43(a). In the Request, the Postal Service proposes that it will submit the “relevant data within the [Annual Compliance Report].” Request at 10. However, as the Public Representative observes, the Request does not identify what data is relevant for measuring whether the NSA enhances Postal Service’s operational functions or how it plans to collect such data. See PR Comments at 8. As discussed above, the Postal Service does not provide any qualitative or quantitative analysis supporting its assertion that the Inbound Market Dominant NPR-FPO product will enhance its operational function. Accordingly, there is no indication of what data the Postal Service will provide or how it intends to collect such data so that the Commission may evaluate whether the agreement operates in compliance with 39 U.S.C. § 3622(c)(10).

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<sup>18</sup> Domestic Mail Manual at section 608.2.3.2, *available at*: <https://pe.usps.com/text/dmm300/608.htm>.

<sup>19</sup> For example, Asendia USA advertises that companies sending inbound mail to the United States can access Asendia USA’s discounts for Presorted First-Class Mail and USPS Marketing Mail. See Asendia, USPS International and Domestic, *available at*: <https://www.asendiausa.com/usps-international-domestic/>.

In addition, because the Inbound Market Dominant NPR-FPO product is “merely a grouping of other products already being measured,” the Postal Service requests that the product be excepted from separate reporting under 39 C.F.R. § 3055.3(a)(3). Request at 10-11 (internal marks omitted). However, it is unclear whether there would be any volume under those “products already being measured” if the Commission approves the addition of the Inbound Market Dominant NPR-FPO product and the Postal Service signs the Model Contract with all foreign postal operators. For example, if all the Inbound Letter Post volume would be sent under the proposed product, it is unclear whether the Postal Service would continue to report on Inbound Letter Post or whether such reporting would lapse.

### C. Other Issues

If the Postal Service decides to revise or supplement its Request, the Commission notes that there are additional issues that it should address. First, the Public Representative filed a motion for issuance of an information request. The Commission has many of the same questions regarding the Request. Therefore, in future filings, the Postal Service should include information that responds to the Public Representative’s questions. For example, the Public Representative asks the Postal Service to “explain how [it] will account for the Inbound Letter Post volumes and prices in the next generally applicable rate adjustment consistent with 39 C.F.R. § 3010.24.” Motion at 2. In the Request, it appears that the Postal Service proposes to re-establish the generally applicable market dominant Inbound Letter Post product as a non-generally applicable market dominant NSA. The Public Representative observes that approving the Request will likely affect future market dominant rate adjustments. PR Comments at 8. In supplemental or amended filings, the Postal Service should discuss how the proposed market dominant NSA product will be accounted for in the price cap and other potential implications for future market dominant rate adjustments. In addition, the Postal Service should address the deletion of any existing market

dominant products as it relates to the proposed Inbound Market Dominant NPR-FPO product. The Commission also shares the Public Representative's questions regarding how the proposed Inbound Market Dominant NPR-FPO product is consistent with the Commission's directive in the FY 2018 ACD and the Presidential Memorandum. Motion at 2-3.

Second, there is a lack of clarity regarding the implementation of different agreements within the Inbound Market Dominant NPR-FPO product as non-published rate (NPR) agreements. The Postal Service and the Public Representative both observe that one characteristic of a NPR NSA product is that after the Commission adds the NPR NSA to the product list, the Postal Service may sign new agreements under that product without prior Commission review. Request at 14; PR Comments at 2. However, the Postal Service states that it expects variations among the Inbound Market Dominant NPR-FPO 1 agreements. Request, Attachment 2B at 8 n.12. In its request associated with competitive portions of the Model Contract, the Postal Service states that it expects such variations to include "dispute settlement, security procedures, prohibition listings, customs requirements abroad, and technical transmission standards."<sup>20</sup> However, as the Public Representative observes, the Postal Service does not provide a similar list of potential variations for the market dominant portions of the Model Contract. PR Comments at 7. It is possible that such variations could affect the NSA's ability to enhance operational functions. The Postal Service should explain how these anticipated variations from terms of the Model Contract will affect whether the individual agreements will enhance the Postal Service's operational functions. In addition, the Postal Service should also explain the process by which it plans to get such deviations reviewed and approved by the Commission to ensure that Inbound

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<sup>20</sup> Docket Nos. MC2019-180 and CP2019-202, Request of the United States Postal Service to Add Inbound Competitive Non-Published Rate Agreements with Foreign Postal Operators to the Competitive Products List and Notice of Filing Inbound Competitive NPR-FPO 1 Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, August 2, 2019, at 7-8.

Market Dominant NPR-FPO agreements are substantially identical to the Model Contract.

Third, the Postal Service states that the Model Contract provides prices for the acceptance, processing, and delivery of Inbound Letter Post mailpieces. Request at 12. The Postal Service states that “[t]hese items may also include direct entry letters and flats, bearing domestic postage and indicia, as well as international business reply service, which meet U.S. domestic mailing requirements.” *Id.* However, it does not appear that there are separate rates for such mailpieces. It is necessary for the Postal Service to clarify whether there are separate rates for such direct entry letters and flats and international business reply service mailpieces. If there are not separate rates for such mailpieces, the Postal Service should explain why it is charging the same rate for these mailpieces and the inbound market dominant letters and flats and why it is not charging domestic rates.

Fourth, the Request includes multiple references to regulations applicable to competitive products or to the Postal Service’s request to add the Inbound Competitive Non-Published Rate Agreements with Foreign Postal Operators product to the competitive product list.<sup>21</sup> For example, it appears that the Postal Service copied some of its discussion relating to potential commercial harms in the application for non-public treatment filed in these dockets from the application for non-public treatment that the Postal Service filed in Docket Nos. MC2019-180 and CP2019-202. As there are differences in the information filed in those dockets compared to the instant Request, the Postal Service should ensure that its application of non-public treatment attached to a revised or supplemental request meets the standards of 39 U.S.C. § 504(b) and 39

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<sup>21</sup> See Request at 2 (“the Postal Service requests that the Commission add . . . pursuant to 39 C.F.R. § 3015.5., within that new product grouping, the Inbound Market Dominant NPR-FPO 1 product.”); *id.* at 14 (“[t]he Postal Service respectfully requests that the Commission add . . . Inbound Competitive Non-Published Rate Agreements with Foreign Postal Operators 1 within that new product.”).

C.F.R. part 3007 to justify non-public treatment of data or attachments the Postal Service files under seal.

#### D. Conclusion

After reviewing the Request, the Model Contract, the supporting documentation, and Public Representative's comments, the Commission is unable to approve the Request at this time because the Postal Service has not demonstrated that the Inbound Market Dominant NPR FPO product or the Model Contract comply with the applicable statutory and regulatory requirements. Specifically, the Request does not identify components of the agreement expected to enhance the performance of mail preparation, processing, transportation, or other functions or discuss the nature and expected impact of each enhancement. Additionally, the Request fails to discuss the *status quo* to which it compared operational functions under the proposed NSA. Relatedly, the Postal Service's proposed data collection plan also fails to identify what data it proposes to provide the Commission. Accordingly, the Commission is unable to approve the Postal Service's request to add the Inbound Market Dominant NPR-FPO product to the market dominant product list. If the Postal Service wishes to amend or supplement its Request, the Postal Service should address these and the additional issues discussed above.

However, as discussed in the body of this Order, the Postal Service is able to enter into bilateral and multilateral agreements under 39 U.S.C. § 407(d) for the acceptance, processing, and delivery of Inbound Letter Post mailpieces at prices previously approved by the Commission. To facilitate this, the Commission is taking action to implement previously conditionally approved revisions to the MCS that take into account the withdrawal of the United States from the UPU. In Order No. 4890, the Commission directed that the revised MCS language become effective once Inbound Letter Post small packets and bulky letters transfer from the market dominant to the competitive product list. Because it is possible that the United States withdraws from the UPU before Inbound Letter Post small packets and bulky letters transfer to the

competitive product list, the attached MCS revisions, which reference the UPU, shall go into effect when the United States withdraws from the UPU.

#### IV. ORDERING PARAGRAPHS

*It is ordered:*

1. The Commission cannot approve the Postal Service's request to add Inbound Market Dominant Non-Published Rate Agreements with Foreign Postal Operators, filed on August 14, 2019, to the market dominant product list at this time.
2. The following changes to the Mail Classification Schedule go into effect when the United States withdraws from the UPU.

By the Commission.

Darcie S. Tokioka  
Acting Secretary

## CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

### Part A—Market Dominant Products 1000 Market Dominant Product List

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#### 1100 First-Class Mail

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#### 1130 Inbound Letter Post

##### 1130.1 Description

- a. Inbound Letter Post consists of inbound International pieces (originating outside of the United States and destined for delivery inside of the United States) that are ~~subject to the provisions of the Universal Postal Convention of the Universal Postal Union and~~ encompasses letters (to include aerogrammes and postcards), packages, ~~postcards~~, and small packets, up to 2 kilograms. Inbound Letter Post items in transit through the United States from a foreign origin for delivery to a foreign destination are included in the Inbound Letter Post Grouping. Inbound Letter Post includes items for the blind that correspond to the applicable format.

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##### 1130.4 Price Categories

The following price categories are available for the product specified in this section:

- ~~UPU~~ Terminal Dues
  - Letters, postcards, and small packets up to 2 kilograms

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##### 1130.6 Prices

Foreign ~~postal operators~~ ~~administrations~~ pay the Postal Service for the delivery of inbound letter post mail at prices ~~set by the Universal Postal Convention,~~ known as terminal dues, as determined by applicable self-declared rates or international

agreement. Payment by the foreign administration is made in accordance with the Universal Postal Convention Article 12 and associated UPU Letter Post Regulations. This information is available in the Letter Post Manual, which are available at [www.upu.int](http://www.upu.int).