

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

Competitive Product Prices  
Priority Mail Express, Priority Mail, First-Class Package  
Service & Parcel Select Contracts  
Priority Mail Express, Priority Mail, First-Class Package  
Service & Parcel Select Contract 4

Docket No. MC2020-81

Competitive Product Prices  
Priority Mail Express, Priority Mail, First-Class Package  
Service & Parcel Select Contract 4 (MC2020-81)  
Negotiated Service Agreements

Docket No. CP2020-80

ORDER ADDING PRIORITY MAIL EXPRESS, PRIORITY MAIL, FIRST-CLASS  
PACKAGE SERVICE & PARCEL SELECT CONTRACT 4  
TO THE COMPETITIVE PRODUCT LIST AND APPROVING RATES IN PART

(Issued January 8, 2020)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 to the

competitive product list.<sup>1</sup> For the reasons discussed below, the Commission approves the Request.

## II. BACKGROUND

On December 23, 2019, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3020.30-.35, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3). Request at 1. Among the supporting documents, the Postal Service included a copy of the Governors’ Decision authorizing the product, a contract related to the proposed new product, requested changes to the competitive product list, a statement supporting the Request, a certification of compliance with 39 U.S.C. § 3633(a), and financial workpapers. In addition, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal. *Id.* Attachment F.

The contract is intended to take effect two business days after the Commission completes its review. Request, Attachment B at 8. It is intended to expire December 31, 2023. *Id.*

On December 27, 2019, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.<sup>2</sup>

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<sup>1</sup> USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 to Competitive Product List and Notice of Filing Materials Under Seal, December 23, 2019 (Request).

<sup>2</sup> See Docket No. CP2018-123, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 27, 2019.

### III. COMMENTS

The Public Representative filed comments on December 30, 2019.<sup>3</sup> No other interested person filed comments. The Public Representative concludes that the contract should be categorized as a competitive product and that it should generate sufficient revenue to cover its costs in its first year. PR Comments at 2-3. He characterizes as reasonable the Postal Service's assertions regarding the classification of the contract as a competitive product. See *id.* at 3. He notes that the contract contains a mechanism for the annual upward adjustment of prices and that the Commission will have an opportunity to annually review the financial results of the contract. *Id.*

### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the supporting data filed under seal, and the Public Representative's comments.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Request include assigning Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34. Before adding a product to the competitive product list, the Commission must determine that the Postal Service does not exercise sufficient market power that it can effectively set the price of the product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. See 39 U.S.C. § 3642(b)(1). In addition, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the

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<sup>3</sup> Public Representative Comments on Postal Service Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 to the Competitive Product List, December 30, 2019 (PR Comments).

likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f), (g), and (h).

The Postal Service asserts that it provides postal services of the kind provided under the contract in a highly competitive market, that other shippers who provide similar services constrain its bargaining position, and that it can therefore neither raise prices nor decrease service, quality, or output without risking the loss of business to competitors. Request, Attachment D at 2. The Postal Service states that the contract partner supports the Request, that expedited shipping is widely available from private firms, and that the Postal Service is unaware of any small business concerns that could offer comparable services to the contract partner. *Id.* at 3.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. The availability of other private sector providers supports this conclusion. The contract partner and the Public Representative support the addition of the Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 product to the competitive product list. Further, there is no evidence of an adverse impact on small businesses. For these reasons, having considered the relevant statutory and regulatory requirements, the comments filed, and the Postal Service's supporting justification, the Commission finds that Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 is appropriately classified as competitive and is added to the competitive product list.

*Cost considerations.* Because the Commission finds Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 is a competitive product, the Postal Service must also show that the contract covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, 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 contract exceeds its attributable costs, the contract 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 the contract covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

Based on a review of the record, the Commission finds that the rates during the first year of the contract should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). For this reason, the Commission also finds that, during the first year, the contract 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, the Commission finds the contract, during the first year, 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 contract indicates it is consistent with section 3633(a) for the first year.

*Cost Coverage in Later Years.* The contract specifies a different set of rates to take effect in the second year of the contract, and another set of rates to take effect in the third and subsequent years of the contract. Request, Attachment B at 5-6. The Postal Service did not include these rates in the financial workpapers filed in support of the request, presumably because these rates fall outside the 12-month period for which data is required to be submitted under 39 C.F.R. § 3015.5(c)(1).

The Postal Service has previously proposed new competitive products that featured multiple sets of rates scheduled to take effect sequentially.<sup>4</sup> In each case, however, all of those rates were scheduled to take effect during the 12-month period following implementation, and thus were submitted for Commission review in the

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<sup>4</sup> See, e.g., Docket Nos. MC2019-201 and CP2019-224, USPS Request to Add Priority Mail Express, Priority Mail & First-Class Package Service Contract 66 to Competitive Product List and Notice of Filing Materials Under Seal, September 17, 2019, Attachment B at 4, 8.

financial workpapers.<sup>5</sup> By contrast, if the Commission were to approve this contract for its full term, the rates scheduled for the second and third years of this contract would never be reviewed by the Commission prior to implementation. Pre-implementation review of new or changed rates under 39 C.F.R. § 3015.5 is essential to the Commission's ability to ensure compliance with 39 U.S.C. § 3633(a)(2).

The Commission does, however, routinely approve contracts with price adjustment clauses that take effect in later years so long as the amount of such adjustments are specified and those adjustments cannot decrease rates below those that the Commission has already reviewed and approved.<sup>6</sup> The Commission does not treat price adjustments that meet those two criteria as changes in rates for purposes of 39 C.F.R. § 3015.5. In keeping with those precedents, the Commission finds that rates scheduled beyond the 12-month period covered by the financial workpapers do not qualify as changes in rates for purposes of 39 C.F.R. § 3015.5 so long as the rates are specified and are not below the rates the Commission has reviewed in the financial workpapers submitted under 39 C.F.R. § 3015.5(c)(1). This requirement gives the Postal Service the ability to schedule rates that will have improved cost coverage over the rates the Commission has already reviewed, while simultaneously ensuring that any downwards adjustment in rates is subject to pre-implementation review for compliance with 39 U.S.C. § 3633(a)(2).

The Commission has reviewed the scheduled rates in the contract and determined that they do not all comply with this requirement. For a small number of rate

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<sup>5</sup> The Commission reviews the cost coverage of such products using the total revenue within the first 12 months after implementation by adding the revenue generated by each set of prices. See Docket Nos. MC2019-17 and CP2019-155, Order Granting Postal Service's Motion and Approving Prices for Inbound Letter Post Small Packets and Bulky Letters, December 19, 2019, at 14 (Order No. 5372).

<sup>6</sup> When adjustment provisions appear to give the Postal Service the flexibility to adjust rates downwards, or do not specify the amount of an increase, the Commission requires that any such adjustment be submitted for pre-implementation review in accordance with 39 C.F.R. § 3015.5. See, e.g., Docket Nos. MC2020-76 and CP2020-75, Order Adding Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 3 to the Competitive Product List, December 30, 2019, at 5 n.6 (Order No. 5384).

cells, prices are scheduled to decrease below the rates presented in the financial workpapers. Accordingly, the Commission approves the rates in the contract only for the period during which the rates submitted to the Commission in the financial workpapers are in effect. Absent subsequent action by the Commission, the contract will expire and be removed from the Mail Classification Schedule (MCS) on the earlier of: (a) the first effective date of any change in rates of general applicability for competitive products in 2021, or (b) February 1, 2021. See Request, Attachment B at 4. Unless amended as described below, the automatic extension provisions in the contract may not be used to extend the contract beyond this date.

The Postal Service may amend the contract to restore the original term and extension provisions by either: (a) revising the rates scheduled for future years to be no lower than the rates in effect during the first 12 months of the contract as shown in the financial workpapers filed in support of the Request, or (b) filing a timely amendment under 39 C.F.R. § 3015.5 to change the rates approved for the first year of the contract to the scheduled rates for future years.<sup>7</sup> Under option a, the Postal Service would not need to file new financial workpapers. Under option b, the Postal Service would need to file financial workpapers concurrent with the amendment as required by 39 C.F.R. § 3015.5(c)(1) covering the 12-month period from the effective date of the new rates.

The Commission will review the contract's cost coverage and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Commission's Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

*Other considerations.* By its terms, the contract becomes effective two business days after the Commission completes its review. Request, Attachment B at 8. Unless terminated earlier, or amended as described above, the contract will expire the earlier

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<sup>7</sup> The contract leaves rates for First-Class Package Service in future years to determination by the Postal Service. See Request, Attachment B at 6. As the Commission stated in Order No. 5384, any adjustment to the amount of the discounts under this provision requires preapproval from the Commission in compliance with 39 C.F.R. § 3015.5. See Order No. 5384 at 5 n.6.

of: (a) the first effective date of any change in rates of general applicability for competitive products in 2021, or (b) February 1, 2021.

The contract also contains provisions that allow the parties to extend the contract for two 1-year periods and two 90-day periods. *Id.* at 8. Because rates lower than those that the Commission has reviewed are scheduled to be in effect beyond the first year of the contract, the Postal Service may not utilize these extension periods unless the contract is amended as described above.

If the instant contract is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in these dockets.

In conclusion, the Commission approves Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 as a new product, and approves the rates for that product in part. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.

#### V. ORDERING PARAGRAPHS

*It is ordered:*

1. Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4 (MC2020-81 and CP2020-80) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic. Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.
2. The Postal Service shall promptly file notice of the instant contract's termination with the Commission in these dockets if the instant contract terminates prior to the scheduled expiration date.



3. Unless terminated earlier, or amended as described in the body of this order, the contract will expire the earlier of: the first effective date of any change in rates of general applicability for competitive products in 2021, or February 1, 2021.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Ruth Ann Abrams  
Acting Secretary

## CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3020, subpart A—Competitive Product List. These changes reflect the Commission’s order in Docket Nos. MC2020-81 and CP2020-80. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

### **Appendix B to Subpart A of Part 3020—Competitive Product List**

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#### **Negotiated Service Agreements\***

Domestic\*

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Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract

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## 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 B—Competitive Products** **2000 Competitive Product List**

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#### **Negotiated Service Agreements\***

Domestic\*

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Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract

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#### **2500 Negotiated Service Agreements**

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#### **2505 Domestic**

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#### **2505.15 Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contracts**

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- Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 4

#### Baseline Reference

Docket Nos. MC2020-81 and CP2020-80

PRC Order No. 5399, January 8, 2019

#### Included Agreements

CP2020-80, expires TBD

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