

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—Non-Published Rates
Priority Mail—Non-Published Rates 2

Docket No. MC2020-156

Competitive Product Prices
Priority Mail—Non-Published Rates 2 (MC2020-156)
Negotiated Service Agreements

Docket No. CP2020-170

ORDER ADDING PRIORITY MAIL—NON-PUBLISHED RATES 2 TO THE
COMPETITIVE PRODUCT LIST

(Issued June 25, 2020)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail—Non-Published Rates 2 (PM—NPR 2) to the competitive product list.¹ Request at 1. For the reasons discussed below, the Commission approves the Request.

¹ USPS Request to Establish New Priority Mail—Non-Published Rates Product (PMNPR-2) and Notice of Filing Materials Under Seal, June 11, 2020 (Request).

II. BACKGROUND

Existing products in the PM—NPR product grouping consist of standardized contracts for the Postal Service to provide Priority Mail service to individual customers at customized prices.² As described in Order No. 661, so long as the standardized contract and financial model reviewed by the Commission remain in use, each individual contract should comply with title 39.³ Accordingly, following approval of a PM—NPR product, the Commission authorizes the Postal Service to enter into additional such contracts and file them with the Commission after implementation. Order No. 661 at 8. This methodology permits the Postal Service to implement individual standardized PM—NPR contracts more quickly than it can implement customized contracts that each require individual pre-implementation review. *See id.*

Similar to PM—NPR 1, the proposed PM—NPR 2 product offers discounted rates for Priority Mail packages, Priority Mail cubic package, Priority Mail Flat Rate Envelopes, and Priority Mail Flat Rate Boxes, except for Large Flat Rate Boxes. Request, Attachment C at 1. Additionally, PM—NPR 2 offers discounted rates for Priority Mail Regional Rate Box A and B and may include discounts for packages inbound to the contract partner. *Id.*

On June 11, 2020, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3040.30 *et seq.*, the Postal Service filed the Request, along with supporting documents. In the Request, the Postal Service asserts that PM—NPR 2 is a competitive product “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, three model contracts, proposed changes to the Mail Classification Schedule, a management

² See, e.g., Mail Classification Schedule (MCS) § 2505.9.1(a), available at: <https://www.prc.gov/mail-classification-schedule>.

³ Docket Nos. MC2011-15 and CP2011-51, Order Approving Addition of Priority Mail—Non-Published Rates 1 to the Competitive Product List, February 3, 2011, at 7 (Order No. 661).

analysis, a certification of compliance with 39 U.S.C. § 3633(a), and a statement of supporting justification. *Id.* at 1-2; *see also* Request, Attachments A-F. 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. Request, Attachment G. The Postal Service also filed financial workpapers under seal.

On June 12, 2020, the Commission issued a notice establishing the two dockets, appointing a Public Representative, and providing interested persons with an opportunity to comment.⁴

III. COMMENTS

Comments were filed by the Public Representative on June 17, 2020.⁵ No other comments were received. The Public Representative concludes that the PM—NPR 2 product should be added to the competitive product list. PR Comments at 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 states that the prices set in PM—NPR 2 contracts should generate sufficient revenue to cover costs and thus satisfy 39 U.S.C. § 3633(a). *Id.* at 4.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the model 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 PM—NPR 2 to either the market dominant or

⁴ See Docket No. MC2020-156, *et al.*, Notice Initiating Docket(s) For Recent Postal Service Negotiated Service Agreement Filings, June 12, 2020.

⁵ Public Representative Comments on Postal Service Request to Establish New Priority Mail—Non-Published Rates Product (PMNPR-2), June 17, 2020 (PR Comments).

competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3040.134. 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 likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3040.132(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 F 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 4.

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 PM—NPR 2 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 PM—NPR 2 is appropriately classified as competitive and is added to the competitive product list.

Cost considerations. The management analysis and financial model presented by the Postal Service in support of the PM—NPR 2 product indicates that the rates are sufficient to cover attributable costs, and that the product is not being cross-subsidized by market dominant products and should make a positive contribution to institutional costs. Thus, based on a review of the Request, supporting data, and comments, the Commission finds that the rates for PM—NPR 2 contracts should cover their attributable costs (39 U.S.C. § 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. § 3633(a)(3)).

Other Issues. PM—NPR 2 includes three different model contracts. The differences between the contracts are limited to the time period over which the customer's volume commitment is measured: annually, quarterly, or a rolling quarterly average. The Commission has determined that the variation between the different model contracts is minor and does not affect the ability of any of the model contracts to cover costs.

The Postal Service states that the MCS § 2505.9.6 incorrectly lists the existing PM—NPR product as "Priority Mail—Non-Published Rates 2" instead of "Priority Mail—Non-Published Rates 1." Request, Attachment B at 1, n.1. Revisions to correct this error are included in the MCS revisions attached to this order. The Competitive Product List already shows the correct product name and does not require revision.

Conclusion. The Commission approves the inclusion of PM—NPR 2 (MC2020-156 and CP2020-170) within the PM—NPR 2 product grouping on the MCS and as a new product on the competitive product list.

In connection with the new product, the Postal Service, consistent with Order No. 661, will provide a copy of each PM—NPR 2 customer agreement to the

Commission, along with the financial cost inputs used to generate the rates for the customer, and the effective date of each PM—NPR 2 agreement. Each PM—NPR 2 customer agreement must be filed with the Commission within a reasonable time, *e.g.*, 10 days of its effective date (including modified or renewed contracts). See Order No. 661 at 8.

All contracts using the PM—NPR 2 model customer contracts and the rates in the Management Analysis shall be filed in a single docket and shall be reported as a single competitive product in the appropriate Annual Compliance Report. In addition, each PM—NPR 2 contract shall bear a serial number and subsequent information filed with the Commission concerning a specific contract will be filed with reference to the docket and serial number.

Non-Published Rates products such as PM—NPR 2 give the Postal Service flexibility to enter into agreements that meet set conditions without seeking prior approval from the Commission. In light of the additional flexibility afforded to the Postal Service with these types of agreements, these associated reporting requirements are a critical part of the regulatory regime. The Commission cautions the Postal Service that failure to timely file individual contracts could result in the cancellation of such contracts by the Commission.⁶

V. ORDERING PARAGRAPHS

It is ordered:

1. The Commission approves the proposed model contracts filed in these dockets.

⁶ See Docket No. CP2011-51, Order Requiring Additional Information, December 29, 2016, at 4 (Order No. 3714).

2. The Commission adds Priority Mail—Non-Published Rates 2 (MC2020-156 and CP2020-170) to the competitive product list within the product grouping for PM—NPR in the Mail Classification Schedule. Revisions to the competitive product list and the Mail Classification Schedule, as described in the body of this Order, appear below the signature of this Order and are effective immediately.
3. Changes in rates due to changes to the PM—NPR 2 model contract and/or changes to the financial model must be approved in advance by the Commission pursuant to 39 C.F.R. part 3035.
4. A copy of each contract, along with the financial model inputs used to generate rates for each contract, must be filed with the Commission within a reasonable time, e.g., within 10 days of the effective date of the contract.
5. The Postal Service shall notify the Commission of the effective date and scheduled termination date of each contract. If any contract terminates earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date.
6. The Secretary shall arrange for the publication in the *Federal Register* of an updated product list reflecting the change made in the body of this Order.

By the Commission.

Erica A. Barker
Secretary

CHANGES TO THE PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3040, subpart A—Competitive Product List. These changes reflect the Commission’s order in Docket Nos. MC2020-156 and CP2020-170. 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 3040—Competitive Product List

Negotiated Service Agreements*

Domestic*

Priority Mail—Non-Published Rates

Priority Mail—Non-Published Rates 2

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**

Negotiated Service Agreements*

Domestic*

Priority Mail—Non-Published Rates

Priority Mail—Non-Published Rates 2

2500 **Negotiated Service Agreements**

2505 **Domestic**

2505.9 **Priority Mail—Non-Published Rates**

2505.9.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- Priority Mail—Non-Published Rates 2~~1~~
Baseline Reference
Docket Nos. MC2011-15 ~~&~~ and CP2011-51
PRC Order No. 661, February 3, 2011
Included Agreements
- Priority Mail—Non-Published Rates 2
Baseline Reference
Docket Nos. MC2020-156 and CP2020-170
PRC Order No. 5562, June 25, 2020
Included Agreements
