

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

TRANSFERRING BOUND PRINTED MATTER
PARCELS TO THE COMPETITIVE PRODUCT
LIST

Docket No. MC2021-78

RESPONSES OF THE UNITED STATES POSTAL SERVICE TO COMMISSION
INFORMATION REQUEST NO. 1
(September 2, 2021)

The United States Postal Service hereby provides its responses to the Commission's Information Request No. 1, issued on August 19, 2021. Each question is stated verbatim and is followed by its response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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September 2, 2021

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The Postal Service notes that preparation requirements are among the characteristics to be examined when determining the relevant market segment for parcel transfer cases.¹ Scholastic, Inc. states that the Postal Service handles a substantial volume of non-containerized parcels whereas neither FedEx Corporation nor United Parcel Service, Inc. will accept non-containerized parcels.² Please answer the following questions concerning containerized and non-containerized parcels.

1. Please confirm that the Postal Service accepts non-containerized volume as BPM Parcels. If confirmed, please provide the percentage of BPM Parcels volume that is not containerized. If reliable data are unavailable, please provide the best available estimate and indicate the source of that estimate.

Response:

For the Postal Service, the term “container” typically refers to the container in which mailers present large mailings or shipments, e.g., sacks, pallets, or pallet boxes. In the context of these questions, however, the Postal Service understands “container” to mean “a cardboard box” and “non-containerized” to mean “wrapped in plastic sturdy enough to withstand handling on a parcel sorting machine.” With that understanding, yes, the Postal service accepts BPM Parcels that are “non-containerized.”

Packaging, however, is a means by which the Postal Service assures mailability, not a means to distinguish one product from another or to distinguish Market Dominant from competitive products. Generally, for both Market Dominant or competitive products, packaging must withstand normal transit and handling without breakage or deterioration of content, package breakage, injury to USPS employees, or damage to other mail, DMM § 601.3.1.

¹ Request at 5 (citing Docket No. MC2015-7, Order Conditionally Approving Transfer, July 20, 2017 (Order No. 4009)).

² See Comments of Scholastic, Inc. Opposing the Transfer of Bound Printed Matter Parcels to the Competitive Product List, May 17, 2021, at 3, 26.

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The Postal Service, therefore, accepts non-containerized parcels for products other than BPM Parcels, both Market Dominant and competitive, such as First-Class Package Service, Priority Mail, and Parcel Select (*e.g.*, prescription fulfillment and clothing orders sent in polybags.)

The Postal Service also accepts parcels packaged or wrapped in materials other than cardboard boxes and sturdy plastic wrap. Acceptable packaging includes cardboard boxes, fiberboard tubes, paper bags and wraps, plastic bags, plastic film, cloth bags, bales, and cans and drums. DMM §§ 601.4.1 – 601.4.10.

The Postal Service's data systems do not collect information on the type of packaging or enclosure on a parcel. Based upon the observations and experience of its officials, however, the Postal Service estimates that more than half of BPM Parcels volume is sent in packaging other than cardboard boxes. Further, significant percentages of other competitive parcels such as First-Class Package Service and Priority Mail are sent in packaging other than cardboard boxes.

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2. Please indicate which of the competing products identified in the Request accept non-containerized parcels. For each such competing product identified, please also indicate whether that product accepts dropshipped parcels.

Response:

All UPS domestic products, including UPS Ground, accept non-containerized parcels, though they are subject to an additional handling charge. 2021 UPS Rate and Service Guide, July 11, 2021, at 124. These additional handling charges apply, for example, to “[a]ny article that is not fully encased in a corrugated cardboard shipping container,” and “[a]ny package with an outer shipping container covered in shrink wrap or stretch wrap.” *Id.* UPS also accepts unenclosed items for shipping, e.g. automobile tires, subject to an additional handling charge. *Id.* at 12.

Similarly, all FedEx ground services, including FedEx Ground, accept non-containerized parcels and unenclosed items, and they are also subject to an additional handling charge. FedEx Service Guide, January 4, 2021, at 100, 145.

As to the other products the Postal Service has identified as competing with BPM Parcels – UPS Mail Innovations, UPS SurePost, FedEx SmartPost, DHL SmartMail, and OSM Worldwide, these products all accept non-containerized parcels to the extent that they all use BPM Parcels for last-mile delivery. Again, UPS and FedEx expressly permit non-containerized parcels. If DHL or OSM have prohibitions against non-containerized packages, the Postal Service is unaware of them.

Finally, commercial customers can negotiate with UPS and FedEx not only for lower rates but also lower additional handling charges. See, e.g., Brian Gibbs, “UPS Shipper Contract Negotiation – Understand and Optimize, part 2,”

<https://www.refundretriever.com/blog/ups-agreement-2#Accessorial-Fee-Reductions>,

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accessed August 30, 2021. The Postal Service is unaware of any published dropship rates for UPS Ground and FedEx Ground but reasonably believes that commercial customers can negotiate rates for this kind of package acceptance.

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3. Please indicate whether the Postal Service considers containerized and/or non-containerized parcels to be “subclasses or other subordinate units” of BPM Parcels within the meaning of 39 U.S.C. § 3642(c), and please fully explain the Postal Service’s rationale for that position.

Response:

No, the Postal Service does not consider containerized or non-containerized parcels to be subclasses or subordinate units of BPM Parcels withing the meaning of 39 U.S.C. § 3642(c). That section states that an entire class of mail need not be the subject of a transfer between the Market Dominant and competitive product lists. Rather, the transfer can involve only an individual product within a class, much as the current transfer request does. If granted, BPM Parcels would transfer to the competitive product list, but BPM Flats would remain on the Market Dominant list.

As stated in the response to Q1, above, packaging does not distinguish one parcel product from another. Taking bound printed matter, such as catalogues or books, out of a cardboard box and shrink-wrapping them in sturdy plastic (or, for that matter, putting them in a padded cloth bag) does not create a new postal product. As long as the packaging satisfies DMM requirements, the packaged catalogues or books are BPM Parcels and are processed and delivered the same way.

Put slightly differently, changing the packaging of catalogues or books does not create a new product under the definition of that term in 39 U.S.C. § 102(6) – “a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.” There is no difference in cost to the Postal Service between processing a machinable BPM Parcel in a box and a machinable BPM Parcel wrapped in plastic, and the different packaging does not serve different market segments.

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Scholastic Inc. may (or may not) be the only entity that sends shrink-wrapped “educational multi-component bundles” as BPM Parcels, See, Responses of the United States Postal Service to Questions 1 – 9a and 10 - 12 of Chairman’s Information Request No. 1, April 21, 2021, at response to Q1, but it is certainly not the only entity that sends non-containerized BPM Parcels. Again, the Postal Service estimates that more than half of BPM Parcels are non-containerized.

What is more, Scholastic accounted for only a very small fraction of BPM Parcels mailed in FY 2020 – hardly enough on its own to constitute a separate product or market. See, Table 2 filed under seal with original transfer request as USPS-LR-MC2021-78/NP1. And, in any event, under the antitrust principles applicable here, the relevant market is defined by the producers, not the consumers, of the product in question. *Brown Shoe v. United States*, 370 U.S. 294, 325, (1962); *Newcal Industries, Inc. v. Ikon Office Solution*, 513 F.3d 1038, 1045 (9th Cir. 2008). That is, the relevant market here is not defined by the bundles Scholastic sends but by the products the Postal Service and its competitors offer to transport them, and those products are the same whether the bundles are boxed or shrink-wrapped.

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4. Did the Postal Service consider “mandatory containerization” as a preparation requirement germane to the determination of the relevant market segment for purposes of the requested transfer? Please fully explain the Postal Service’s rationale for that position.

Response:

No.

In its original transfer request, the Postal Service noted that under Commission precedent, the characteristics of the parcels products help determine the relevant market segment in parcels transfer cases. Order No. 4009 at 14 – 15 (The different characteristics of different parcels services have “important implications for describing ... alternative service providers, similar competing services, and the market segments in which the parcels services operate”). Characteristics to be examined may include the maximum sizes and weights allowed for a parcel product, its customers, method(s) of transportation, delivery times, pricing, content restrictions (if any), piece minimums (if any), and preparation requirements such as presorting. Order No. 4009 at pp. 14 – 20.

However, for this request, as explained in the responses to Qs 1 – 3, above, packaging is relevant only to the mailability of BPM Parcels. It is not a relevant or essential characteristic of BPM Parcels, other parcels products offered by the Postal Service, or the markets they serve. Again, books and catalogues can be shipped as BPM Parcels packaged in a box or in sturdy plastic wrap. There was, in short, no reason to consider “mandatory containerization” as germane to the determination of the relevant market segment here, and to do so would be inconsistent with existing mailability standards, which apply equally to Market Dominant and competitive parcels products.

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5. Please provide revised draft Mail Classification Schedule language that would facilitate a partial transfer of containerized BPM Parcels to the competitive product list should the Commission find that non-containerized BPM Parcels are not eligible to be transferred.

Response:

The Postal Service is unable to provide the requested language. Creating a new class of mail or postal product is a decision reserved to the Governors, 39 U.S.C. § 404(b), as is authorizing a request to change the lists of Market Dominant and competitive products or to make substantive changes to product descriptions. 39 C.F.R. § 3.4(f) – (g). These decisions are undertaken only after conducting market research and after significant internal review and discussion. For the reasons stated in the responses to Qs 1 – 4, no such research, analysis, or discussion has occurred here, and the Postal Service is wary of unintended consequences that may result from providing language without proper vetting, such as a significant portion of BPM Parcels volume changing its packaging material in response to the resulting price signals. In addition, the Postal Service does not wish to imply that it is considering the product change suggested by the question.