

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

Before Commissioners:

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

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators
United States Postal Service Contractual Bilateral
Agreement – FY22-2 (MC2010-34)
Negotiated Service Agreement

Docket No. CP2022-36

ORDER APPROVING ADDITIONAL
INBOUND COMPETITIVE MULTI-SERVICE AGREEMENT
WITH FOREIGN POSTAL OPERATOR – FY22-2

(Issued January 14, 2022)

I. INTRODUCTION

On December 13, 2021, the Postal Service filed a notice with the Commission pursuant to 39 C.F.R. § 3035.105 and Order No. 546,¹ stating that it has entered into an Inbound Competitive Multi-Service Agreement with a foreign postal operator (FPO).

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY22-2, December 13, 2021, at 1 (Notice). The Postal Service refers to the agreement as “FPO-USPS Agreement FY22-2.” Notice at 1; see Docket Nos. MC2010-34 and CP2010-95, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, September 29, 2010 (Order No. 546).

The Notice concerns the inbound portions of a competitive multi-product agreement referred to as the FPO-USPS Agreement FY22-2. Notice at 1. The Postal Service seeks to include the FPO-USPS Agreement FY22-2 within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.*

For the reasons discussed below, the Commission approves the addition of the FPO-USPS Agreement FY22-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

II. BACKGROUND

The Postal Service intends for the FPO-USPS Agreement FY22-2 to become effective on January 1, 2022. *Id.* at 1, 5. Unless terminated earlier, it will expire on December 31, 2023. *Id.* at 5. Except as otherwise agreed to by contract, the FPO exchanges mail with the Postal Service and applies the Universal Postal Convention and Universal Postal Convention Regulations to those exchanges. *Id.* The competitive services offered by the Postal Service to the FPO in the FPO-USPS Agreement FY22-2 include rates for inbound parcels, packets, and Express Mail Service (EMS). *Id.* at 5-6. The Postal Service states that “[m]any rates will be based on a per-piece and per-kilo structure and in Special Drawing Rights....” *Id.* at 6. Only the inbound portions of the FPO-USPS Agreement FY22-2 that concern competitive products are included in the proposal filed in this docket. *Id.* Outbound delivery of competitive postal products within the FPO’s country have not previously been presented to the Commission and are not presented in this Notice. *Id.* In the Notice, the Postal Service asserts that the FPO-USPS Agreement FY22-2 is functionally equivalent to the baseline agreement for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and requests that the agreement be added to the existing Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 3.

Accompanying the Notice are:

- Attachment 1—an application for non-public treatment of materials to maintain redacted portions of the agreement and supporting documents under seal;
- Attachment 2—a redacted copy of the FPO-USPS Agreement FY22-2;
- Attachment 3—a copy of the Governors' Decision No. 19-1;
- Attachment 4—a certified statement required by 39 CFR 3035.105(c)(2); and
- Supporting financial documentation as separate Excel files.

On December 14, 2021, the Commission issued a notice establishing the instant docket, appointing a Public Representative, and providing interested persons with an opportunity to comment.² On December 20, 2021, Chairman's Information Request (CHIR) No. 1 was issued.³ On December 27, 2021, the Postal Service responded to CHIR No. 1 under seal.⁴ On December 30, 2021, CHIR No. 2 was issued, with questions filed under seal.⁵ On January 6, 2022, the Postal Service filed its response to CHIR No. 2 under seal⁶ and an errata correcting its Response to CHIR No. 1.⁷

² Notice and Order Concerning Inbound Competitive Multi-Agreement with Foreign Postal Operators, December 14, 2021 (Order No. 6063).

³ Chairman's Information No. 1, December 20, 2021 (CHIR No. 1).

⁴ Response of the United States Postal Service to Chairman's Information Request No. 1, December 27, 2021 (Response to CHIR No. 1).

⁵ Chairman's Information Request No. 2 and Notice of Filing Under Seal, December 30, 2021 (CHIR No. 2).

⁶ Responses of the United States Postal Service to Chairman's Information Request No. 2, January 6, 2022 (Response to CHIR No. 2).

⁷ Notice of Errata to Response of the United States Postal Service to Chairman's Information Request No. 1, January 6, 2022.

III. COMMENTS

The Public Representative filed comments on December 21, 2021.⁸ No other comments were received. Based upon a review of the Postal Service's Notice and supporting documentation, the Public Representative concludes that the FPO-USPS Agreement FY22-2 is functionally equivalent to the baseline agreement. PR Comments at 2. Based on the information available to her at the time she filed her comments, the Public Representative concludes that it was likely that the requirements of 39 U.S.C. § 3633(a) will be met.⁹ Subject to the qualification that "clarification regarding the inclusion of negotiated ECOMPRO rates within the bilateral agreement" was needed, she recommends that the Commission approve the addition of the FPO-USPS Agreement FY22-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 3.

IV. COMMISSION ANALYSIS

The Commission's responsibilities in this case are to ensure that the FPO-USPS Agreement FY22-2 is functionally equivalent to the baseline agreement established for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product and satisfies the requirements of 39 U.S.C. § 3633 and applicable Commission rules (39 C.F.R. §§ 3035.105 and 3035.107).

Functional equivalence. In Order No. 546, the Commission added the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product to the competitive product list and established a baseline agreement for assessing the

⁸ Public Representative Comments on Postal Service Notice of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY22-2, December 21, 2021 (PR Comments).

⁹ See *id.* at 2-3. At the time the Public Representative was required to file her comments, the Postal Service had not filed its response to CHIR No. 1 and CHIR No. 2 had not been issued.

functional equivalence of future agreements proposed for inclusion within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.¹⁰

The Postal Service asserts that its filing demonstrates that the FPO-USPS Agreement FY22-2 is functionally equivalent to the baseline agreement and requests that the agreement be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. Notice at 3. It asserts that the FPO-USPS Agreement FY22-2 fits within the Mail Classification Schedule language for the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product. *Id.* at 5. The Postal Service also asserts that the FPO-USPS Agreement FY22-2 and the baseline agreement are materially similar with respect to products and cost characteristics. *Id.* at 7. The Postal Service identifies a number of differences between the FPO-USPS Agreement FY22-2 and the baseline agreement but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the agreements.¹¹

The Commission has reviewed the Postal Service's reasons for asserting that the FPO-USPS Agreement FY22-2 shares similar cost characteristics with the baseline agreement, meets the pricing formula, and falls within the classification established in the Governors' Decision authorizing this product. It also has considered the Public Representative's comments.

The Commission concludes that the FPO-USPS Agreement FY22-2 is functionally equivalent to the baseline agreement and that the differences between the two agreements do not fundamentally alter either the service the Postal Service will

¹⁰ See Order No. 546 at 9. The agreement was with Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV. *Id.* at 1-2; *see also* Decision of the Governors of the United States Postal Service on the Establishment of Prices and Classifications for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators (Governors' Decision No. 10-3), August 6, 2010; Docket No. CP2011-69, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, September 7, 2011, at 5 (Order No. 840).

¹¹ *Id.* at 7-9. Differences include, among others, revisions to negotiated prices for various inbound competitive products, including parcels, packets, and EMS; revisions to existing articles; and inclusion of new articles and attachments. *Id.*

provide under the FPO-USPS Agreement FY22-2 or the structure of the FPO-USPS Agreement FY22-2. The Commission therefore finds that the FPO-USPS Agreement FY22-2 may be included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.

Cost considerations. The Commission reviews each competitive product to ensure that it 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. §§ 3035.105, 3035.107. As long as the revenue generated by a 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, a product that covers its attributable costs is likely to comply with 39 U.S.C. § 3633(a).

The FPO-USPS Agreement FY22-2 includes rates for two parcel streams: retail and commercial. The financial workpapers filed in support of the FPO-USPS Agreement FY22-2 rely on assumptions to project volume, weight, and cost coverage for the commercial parcel stream, due to a lack of historical data on this parcel service.

Given the limited amount of data provided for its review, the Commission directs the Postal Service to file quarterly reports on revenues, pieces, and weights for parcels, packets, and EMS under the instant agreement, and to report data for retail and commercial parcels separately. Each quarterly report shall be filed in the instant docket, and within 30 days of the completion of each fiscal quarter, with the first report due May 2, 2022. Additionally, the Commission directs the Postal Service to separately track and report cost data for the two parcel streams in future Annual Compliance Review dockets, in order to assist in the Commission's evaluation of the cost coverage of the FPO-USPS Agreement FY22-2. Separate reporting of costs for these distinct parcel streams will also facilitate more accurate cost coverage projections, potentially filed in similar proceedings in the future.

Based on the review of the Postal Service's filing, including supporting financial analyses provided under seal, the responses to CHIR Nos. 1 and 2, and the Public Representative's comments, the Commission finds that the FPO-USPS Agreement FY22-2 is projected to cover its attributable costs. Therefore, the addition of the FPO-USPS Agreement FY22-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should not cause cost coverage for the product to fall below 100 percent. Consequently, the Commission finds that the addition of the FPO-USPS Agreement FY22-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to continue to comply with 39 U.S.C. § 3633(a)(2).

Because it finds that the addition of the FPO-USPS Agreement FY22-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product should allow the product to cover its attributable costs, the Commission concludes that the addition of the FPO-USPS Agreement FY22-2 to the product 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 addition of the FPO-USPS Agreement FY22-2 to the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product 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). Accordingly, a preliminary review of the FPO-USPS Agreement FY22-2 indicates it is consistent with section 3633(a).

The Commission will review the cost coverage of the FPO-USPS Agreement FY22-2, the cost coverage of the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

Other considerations. The intended effective date of the FPO-USPS Agreement FY22-2 is January 1, 2022. Notice at 1, 5; *id.* Attachment 2 at 8. The Postal Service

shall promptly notify the Commission should there be a change in the effective date of the FPO-USPS Agreement FY22-2. The agreement is set to expire December 31, 2023, unless terminated earlier in accordance with Article 21 of the FPO-USPS Agreement FY22-2. Notice, Attachment 2 at 8. If the agreement is terminated prior to the scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in this docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. The FPO-USPS Agreement FY22-2 filed in Docket No. CP2022-36, Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with Foreign Postal Operator – FY22-2, December 13, 2021, is included within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product. The revision to the Mail Classification Schedule appears below the signature of this Order and is effective January 1, 2022.
2. The Postal Service is directed to file quarterly reports in this docket, containing data on revenues, pieces, and weights for parcels, packets, and EMS under the FPO-USPS Agreement FY22-2, with data for retail parcels reported separately from data for commercial parcels. Each quarterly report shall be filed within 30 days of the completion of each fiscal quarter, with the first report due May 2, 2022.
3. The Postal Service shall track and report costs, revenues, pieces, and weights for retail parcels under the FPO-USPS Agreement FY22-2 separately from costs, revenues, pieces, and weights for commercial parcels, in future Annual Compliance Review dockets.

4. The Postal Service shall promptly notify the Commission should there be a change in the effective date of the FPO-USPS Agreement FY22-2.
5. The Postal Service shall promptly file notice of the FPO-USPS Agreement FY22-2's termination with the Commission in this docket if the FPO-USPS Agreement FY22-2 is terminated prior to the scheduled expiration date.

By the Commission.

Erica A. Barker
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 B—Competitive Products 2000 Competitive Product List

2500 **Negotiated Service Agreements**

2515 **Inbound International**

2515.10 **Inbound Competitive Multi-Service Agreements with Foreign Postal Operators**

2515.10.5 Products Included in Group (Agreements)

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

- Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

Baseline Reference

Docket Nos. MC2010-34 and CP2010-95

PRC Order No. 546, September 29, 2010

Included Agreements

FPO-USPS Agreement FY22-2, CP2022-36, expires December 31, 2023
