

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

Removal From the Competitive Product List
Parcel Return Service

Docket No. MC2022-95

ORDER REMOVING PARCEL RETURN SERVICE AS A RATE OF
GENERAL APPLICABILITY

(Issued October 24, 2022)

I. INTRODUCTION

On August 12, 2022, pursuant to 39 U.S.C. § 3642 and 39 C.F.R. § 3040.130 *et seq.*, the Postal Service filed a request to remove Parcel Return Service from the Competitive product list.¹ As discussed further below, the Commission grants the Postal Service's Request, insofar as any references to the offering of Parcel Return Service at rates of general applicability will be replaced in the Mail Classification Schedule (MCS) with references to availability at negotiated rates, which are described in the revised MCS language appearing in the Attachment, and will take effect January 22, 2023.

¹ USPS Request to Remove Parcel Return Service from the Competitive Product List, August 12, 2022 (Request).

II. BACKGROUND

Parcel Return Service mail consists of returned merchandise meeting specified preparation and entry requirements, which is retrieved or delivered in bulk, with postage paid by the addressee.² According to the Postal Service, “Parcel Return Service was originally designed for shippers, shipping agents, or return logistics providers who can retrieve items in bulk from the Postal Service’s Return Delivery Units (RDUs) and/or Return Sectional Center Facilities (RSCFs).” Request, Attachment A at 1. Parcel Return Service is provided pursuant to terms set forth in the MCS and through negotiated service agreements (NSAs). See MCS, §§ 2120, 2505.4, 2505.7; Request, Attachment A at 1.

The Postal Service seeks to remove Parcel Return Service from the Competitive product list effective January 22, 2023. See Request at 1. The Postal Service proposes this change because, as it asserts, Parcel Return Service is provided primarily through NSAs, with only three existing “customers using Parcel Return Service at published rates.” Request, Attachment B at 1. According to the Postal Service, existing customers’ Parcel Return Service volume would be “able to be covered via NSAs, as appropriate.” *Id.*

The Postal Service states that “[t]he elimination of Parcel Return Service from the competitive product list will simplify and streamline the Postal Service’s product offerings, and minimize customer confusion.” *Id.* The Postal Service asserts that its request to remove Parcel Return Service from the Competitive product list is consistent with applicable regulations. See *id.* The Postal Service further asserts that removing Parcel Return Service from the Competitive product list will not result in the violation of 39 U.S.C. § 3633 because the remaining Competitive products are expected “to cover their attributable costs and make a positive contribution to institutional costs[.]” See *id.*, Attachment B at 2.

² Postal Regulatory Commission, Mail Classification Schedule, posted June 30, 2022 (with revisions through June 30, 2022), § 2120.1, available at <http://www.prc.gov/mail-classificationschedule> (MCS).

III. PROCEDURAL HISTORY

On August 12, 2022, the Postal Service filed the Request. On August 15, 2022, the Commission issued an order providing notice of the Request, establishing Docket No. MC2022-95 to consider matters raised by the Request, appointing a Public Representative, and providing an opportunity for submitting comments.³ On August 29, 2022, the Public Representative filed a motion for the issuance of an information request.⁴ Upon consideration of the motion pursuant to 39 C.F.R. § 3010.170(e), related questions were included in Chairman's Information Request No. 1 on September 1, 2022,⁵ to which the Postal Service responded on September 8, 2022.⁶ On September 15, 2022, Chairman's Information Request No. 2 was issued,⁷ to which the Postal Service responded on September 22, 2022.⁸ On September 16, 2022, the Public Representative filed comments regarding the Request.⁹ No other comments were filed in response to Order No. 6250.

IV. COMMENTS

The Public Representative does not object to the removal of Parcel Return Service from the MCS, subject to any subsequent objection from Postal Service customers. See PR Comments at 3. In particular, he remarks that the Postal Service is likely to continue to offer Parcel Return Service through NSAs but, by raising prices, could effectively require Parcel Return Service customers to receive service through NSAs rather than generally applicable prices (although, in this event, customers could pursue options in the competitive market).

³ Notice and Order Concerning Removal of Parcel Return Service from the Competitive Product List, August 15, 2022 (Order No. 6250).

⁴ Public Representative Motion for Issuance of Information Request, August 29, 2022 (PR Motion).

⁵ Chairman's Information Request No. 1, September 1, 2022 (CHIR No. 1).

⁶ USPS Response to Chairman's Information Request No. 1, with Portions Filed Under Seal, September 8, 2022 (Response to CHIR No. 1).

⁷ Chairman's Information Request No. 2, September 15, 2022 (CHIR No. 2).

⁸ USPS Response to Chairman's Information Request No. 2, September 22, 2022 (Response to CHIR No. 2).

⁹ Public Representative Comments, September 16, 2022 (PR Comments).

See *id.* at 4. Thus, he sees “no benefit in requiring a published Parcel Return Service product rate to be included in the MCS if the Postal Service wishes to limit that service to NSAs.” *Id.* at 5. That said, he recommends “that the MCS continue to include the availability of the Parcel Return Service product where it is currently located in Section 2120[.]” *Id.* at 6. He advises that replacing the existing rate of general applicability and conditions details with a note referencing the negotiation of prices between the Postal Service and the customer in the MCS would be consistent with 39 U.S.C. § 3642(e) and past Commission practice. See *id.* at 3, 6.

V. COMMISSION ANALYSIS

The Commission evaluates a request to remove a product from the MCS under 39 U.S.C. § 3642 and 39 C.F.R. § 3040.130 *et seq.* Section 3642 provides, among other things, that the Postal Service may change the list of Competitive products under section 3631 by removing products from the list. 39 U.S.C. § 3642(a). Section 3642(b) states that all determinations by the Commission shall be made in accordance with criteria such as whether a product is covered by the postal monopoly and with due regard to the following additional considerations: “the availability and nature of enterprises in the private sector engaged in the delivery of the product involved; the views of those who use the product involved on the appropriateness of the proposed action; and...the likely impact of the proposed action on small business concerns....” 39 U.S.C. § 3642(b)(3). The Commission’s rules also require specified information to be provided in support of the request. See 39 C.F.R. § 3040.132. Further, the Commission evaluates requests to remove a product from the MCS by examining whether the request is a pretext for an abuse of market power and understanding the rationale for the discontinuation.¹⁰

¹⁰ See Docket No. MC2015-8, Order Approving Removal of Return Receipt for Merchandise Service from Mail Classification Schedule, January 16, 2020, at 3, 5 (Order No. 5408); *see also* Docket No. MC2020-126, Order Approving Removal of Customized Postage from Mail Classification Schedule, June 16, 2020, at 5 (Order No. 5550).

A. Whether Parcel Return Service Is Covered by the Postal Monopoly

Market Dominant products covered by the postal monopoly may not be transferred from the Market Dominant product list. See 39 U.S.C. § 3642(b)(2). Because Parcel Return Service is located on the Competitive product list, this prohibition has no bearing on the Request. See MCS at § 2120.

B. The Availability and Nature of Private Sector Enterprises Delivering Parcel Return Service Equivalent Products

The Postal Service states that shipping services competing with Postal Service products, including Parcel Return Service, “are widely available from well-known and successful private firms.” Request, Attachment B at 3. The Public Representative observes that, as a Competitive product, “by definition, Parcel Return Service is or should be available from Postal Service competitors.” PR Comments at 4. Based on the foregoing, and having reviewed the materials filed in this docket, including the materials filed under seal, the Commission finds that private sector enterprises delivering products comparable to Parcel Return Service are available in a competitive market.

C. The Views of Customers Using Parcel Return Service

The Postal Service states that “[t]here are currently only three customers using Parcel Return Service at published rates.” Request, Attachment A at 1. CHIR No. 1 inquired whether the Postal Service had obtained the views of these customers and any other customers that have used Parcel Return Service at published rates during fiscal year (FY) 2022 or FY 2021 regarding the appropriateness of the proposed modification to eliminate Parcel Return Service from the Competitive product list. See CHIR No. 1, question 1. The Postal Service stated that it had obtained such views of the three customers using Parcel Return Service at published rates and that no other customers used Parcel Return Service at published rates in FY 2021 or FY 2022. See Response to CHIR No. 1, question 1. The Postal Service provided the views of the three customers under seal. See *id.* Based on review of the material provided under seal, and the fact that no customers using Parcel

Return Service at published rates filed comments opposing the Request, the Commission finds that the customers using Parcel Return Service have no material concerns with the proposed removal of Parcel Return Service from the Competitive product list.

D. Likely Impact on Small Business Concerns

In ruling on the Request, the Commission must give due regard to “the likely impact of the proposed action on small business concerns.” 39 U.S.C. § 3642(b)(3)(C). According to the Postal Service, “[v]ery few small businesses utilize Parcel Return Service because it is a bulk parcel return service, and most lack the volume to avail themselves of the service.” Request, Attachment B at 4. Further, the Postal Service states that most small businesses using Parcel Return Service “likely do so by partnering with existing NSA customers” and “existing Parcel Return Service NSA will be unaffected” if the Request is granted. *Id.*; see Response to CHIR No. 1, question 7 (“Parcel Return Service only serves bulk returns, not single-piece returns from most retail customers or small to medium businesses.”). These representations appear reasonable and are uncontroverted on the record. Consequently, the Commission finds that the granting of the Request will not have a material effect on small business concerns.

E. Information Required by 39 C.F.R. § 3040.132

The Postal Service must provide a justification supporting the Request. 39 C.F.R. § 3040.132. The rules specify that this justification must do the following:

- (a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;
- (b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;
- (c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;

- (d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:
 - (1) Set the price of such product substantially above costs;
 - (2) Raise prices significantly;
 - (3) Decrease quality; or
 - (4) Decrease output.
- (e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;
- (f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;
- (g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;
- (h) Provide a description of the likely impact of the proposed modification on small business concerns; and
- (i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

39 C.F.R. § 3040.132. As the Commission recently explained:

Such information is not only required by law but necessary in practice. As the Commission has previously explained in the analogous context of changes to the MCS, a full and complete request is important to ensure that the Commission has “sufficient information to make the necessary determination as to whether a [] MCS change is appropriate” and to avoiding the issuance of large numbers of Chairman’s Information Requests during proceedings, which leads “to the expenditure of additional resources by the Commission, the Postal Service, and other interested persons” and “complicate[s] the Commission’s review.” An insufficient initial “explanation of and justification for proposed classification changes also undermines the Commission’s objective that changes [] are made in an accurate and transparent manner, such that it is clear to participants in Commission proceedings, users of the mail, and the Commission the precise

changes the Postal Service is proposing, the likely effects, and the Postal Service's rationale for proposing such changes."¹¹

The Postal Service included the justification specified by 39 C.F.R. § 3040.132 as Attachment B to the Request. See Request, Attachment B. In general, the Commission finds that the amount of information that the Postal Service provided in its justification was limited and inconsistent with the spirit of 39 C.F.R. § 3040.132. Issuance of CHIR No. 1 was necessary to meaningfully evaluate the Request. The Commission observes that the Postal Service's Statement of Supporting Justification should have included all necessary information (particularly "[p]rovide any information available on the views of those who use the product on the appropriateness of the proposed modification" as required by 39 C.F.R. § 3040.132(g)) upon filing to circumvent the need for issuing a CHIR to obtain this information and thereby facilitate regulatory efficiency and transparency. Because nothing on the record appears to indicate that information provided in the supporting justification is unreasonable and the Request was filed sufficiently in advance of the planned effective date to allow for the provision of additional information in Response to CHIR No. 1, the Commission finds that the Postal Service satisfied the minimum requirements of 39 C.F.R. § 3040.132 in this instance.

F. Whether the Request Is a Pretext for Abuse of Market Power

The Commission evaluates requests to remove a product from the MCS by examining whether the request is a pretext for an abuse of market power. See Order No. 5408 at 3, 5; Order No. 5550 at 5. According to the Postal Service, its removal request aims to simplify and streamline product offerings and minimize customer confusion. See Request, Attachment B at 1. Other shippers offer competing products in a robust competitive market. See *id.*, Attachment B at 3. Consequently, the Commission finds that the Postal Service does not possess market power with respect to Parcel Return Service and comparable products. Because the Postal Service lacks market power in this area, it cannot use the

¹¹ Docket No. MC2023-12, Order Dismissing Without Prejudice Postal Service's Request to Convert USPS Connect Local Mail Market Test to a Permanent Offering, October 17, 2022, at 4 (Order No. 6301) (footnotes omitted).

Request as a pretext to abuse any such market power. Thus, the Commission concludes that the Request is not a pretext for the abuse of market power.

G. Rationale for Removal of Parcel Return Service from the Competitive Product List

The Postal Service describes the rationale for removing Parcel Return Service from the Competitive product list as to simplify and streamline product offerings and minimize customer confusion. See Request, Attachment B at 1. According to the Postal Service, Parcel Return Service need not be included on the Competitive product list because only three customers use Parcel Return Service at published prices, and these customers could obtain equivalent service through NSAs. See Request, Attachment A at 1. The Postal Service adds that removing Parcel Return Service from the Competitive product list will prevent customers from incorrectly thinking that Parcel Return Service “is the Postal Service’s preferred, or perhaps only, option available for package returns” when it “only serves bulk returns, not single-piece returns from most retail customers or small to medium businesses.” Response to CHIR No. 1, question 7. Nothing on the record indicates that this rationale is inconsistent with the policies of Title 39 United States Code or the Commission’s rules.

H. Reference to Parcel Return Service NSA Availability in the MCS

The Public Representative recommends that a reference to Parcel Return Service should be maintained on the Competitive product list. See PR Comments at 5-6. The Postal Service contends that it is not “appropriate to list Parcel Return Service on the competitive product list among the list of domestic products in Section 2000 of the [MCS]...if the service is only available via NSAs, as this could further contribute to customer confusion.” Response to CHIR No. 1, question 9.

The Commission finds that minimizing the potential for customer confusion is an important goal and disagrees with the Postal Service that omitting a general reference to the availability of Parcel Return Service at negotiated prices through NSAs advances this goal.

In fact, customer confusion could result if particular Parcel Return Service NSAs are listed in the MCS but there is no general reference to the availability of Parcel Return Service through negotiated rates. The Commission agrees with the Public Representative that including this reference is consistent with 39 U.S.C. § 3642(e) and past treatment of certain nonpostal services available only at negotiated rates. See MCS §§ 2701.2; 2703.2; 2707.2. Thus, the Commission will include a general reference to the availability of Parcel Return Service through negotiated rates in the MCS. Approved NSAs including Parcel Return Service would continue to be listed as domestic products. See 39 C.F.R. pt. 3040, subpt. A, App'x B; MCS § 2505.

VI. CONCLUSION

Based on the foregoing, the Commission concludes that the removal of Parcel Return Service at rates of general applicability meets the applicable requirements of 39 U.S.C. § 3642, as well as those of the Commission's rules and precedent. Thus, the Commission approves the Request, subject to the inclusion of a general reference to the availability of Parcel Return Service through negotiated rates in the MCS, to take effect on January 22, 2023.

VII. ORDERING PARAGRAPHS

It is ordered:

1. The USPS Request to Remove Parcel Return Service from the Competitive Product List, filed August 12, 2022, is approved.

2. The revisions to the Mail Classification Schedule appear below the signature of this Order and are effective January 22, 2023.

By the Commission.

Erica A. Barker
Secretary

CHANGES TO THE MAIL CLASSIFICATION SCHEDULE

The following material represents changes 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

2100 Domestic Products

2120 Parcel Return Service

2120.1 Description

- a. Parcel Return Service mail consists of returned merchandise ~~meeting preparation and entry requirements~~, which is retrieved or delivered in bulk, ~~with postage paid by the addressee~~. Prices are negotiated between customer and the Postal Service.
