

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 Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contracts Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 71	Docket No. MC2023-21
Competitive Product Prices Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 71 (MC2023-21) Negotiated Service Agreements	Docket No. CP2023-20
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 72	Docket No. MC2023-23
Competitive Product Prices Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 72 (MC2023-23) Negotiated Service Agreements	Docket No. CP2023-22
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 73	Docket No. MC2023-25

Competitive Product Prices  
Priority Mail Express, Priority Mail, First-Class Package  
Service & Parcel Select Contract 73 (MC2023-25)  
Negotiated Service Agreements

Docket No. CP2023-24

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 74

Docket No. MC2023-27

Competitive Product Prices  
Priority Mail Express, Priority Mail, First-Class Package  
Service & Parcel Select Contract 74 (MC2023-27)  
Negotiated Service Agreements

Docket No. CP2023-26

ORDER ADDING PRIORITY MAIL EXPRESS, PRIORITY MAIL, FIRST-CLASS  
PACKAGE SERVICE & PARCEL SELECT CONTRACTS  
TO THE COMPETITIVE PRODUCT LIST

(Issued November 4, 2022)

I. INTRODUCTION

In these dockets, the Postal Service seeks to add new products identified as Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contracts 71 through 74 (Agreements and each an Agreement) to the competitive product list. For the reasons discussed below, the Commission approves the Postal Service's requests.

## II. BACKGROUND

On October 19, 2022, through October 26, 2022, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3020.30-.35,<sup>1</sup> the Postal Service filed requests to add four Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select contracts to the competitive product list, along with supporting documents.<sup>2</sup> In each of the Requests, the Postal Service asserts that the corresponding Agreement is a competitive product that establishes rates “not of general applicability” within the meaning of 39 U.S.C. § 3632(b)(3).<sup>3</sup> Among the supporting documents in each filing, 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, with each Request, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted versions of the Governors’ Decision and the contract, customer-identifying information, and related financial information remain under seal.<sup>4</sup>

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<sup>1</sup> The regulations cited by the Postal Service have been reorganized and are now found at 39 C.F.R. §§ 3040.130-.135. See Docket No. RM2019-13, Order Reorganizing Commission Regulations and Amending Rules of Practice, January 16, 2020 (Order No. 5407) (effective April 20, 2020). The Postal Service should cite to the reorganized regulations in future filings before the Commission.

<sup>2</sup> Docket Nos. MC2023-21 and CP2023-20, USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 71 to Competitive Product List and Notice of Filing Materials Under Seal, October 19, 2022 (MC2023-21 and CP2023-20 Request); Docket Nos. MC2023-23 and CP2023-22, USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 72 to Competitive Product List and Notice of Filing Materials Under Seal, October 20, 2022 (MC2023-23 and CP2023-22 Request); Docket Nos. MC2023-25 and CP2023-24, USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 73 to Competitive Product List and Notice of Filing Materials Under Seal, October 21, 2022 (MC2023-25 and CP2023-24 Request); Docket Nos. MC2023-27 and CP2023-26, USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 74 to Competitive Product List and Notice of Filing Materials Under Seal, October 26, 2022 (MC2023-27 and CP2023-26 Request) (together, Requests and each a Request).

<sup>3</sup> MC2023-21 and CP2023-20 Request at 1; MC2023-23 and CP2023-22 Request at 1; MC2023-25 and CP2023-24 Request at 1; MC2023-27 and CP2023-26 Request at 1.

<sup>4</sup> MC2023-21 and CP2023-20 Request, Attachment F; MC2023-23 and CP2023-22 Request, Attachment F; MC2023-25 and CP2023-24 Request, Attachment F; MC2023-27 and CP2023-26 Request, Attachment F.

The Commission issued notices establishing the dockets, appointing Public Representatives, and providing interested persons with an opportunity to comment on the Requests.<sup>5</sup>

### III. COMMISSION ANALYSIS

The Commission has reviewed the Requests, the Agreements, the supporting data filed under seal, and the Public Representatives' comments.

*Product list requirements.* The Commission's statutory responsibilities when evaluating the Requests include assigning each Agreement to either the Market Dominant or 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 contracts 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

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<sup>5</sup> See Docket Nos. MC2023-21 and CP2023-20, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, October 20, 2022; Docket No. MC2023-22 *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, October 21, 2022; Docket Nos. MC2023-25 and CP2023-24, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, October 24, 2022; Docket Nos. MC2023-27 and CP2023-26, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, October 27, 2022.

competitors.<sup>6</sup> The Postal Service states that the contract partners support the Requests, 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 partners.<sup>7</sup>

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the prices of the proposed products 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 partners and the Public Representatives support the addition of the Agreements 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,<sup>8</sup> the comments filed, and the Postal Service's supporting justifications, the Commission finds that each of the Agreements is appropriately classified as competitive and is added to the competitive product list.

*Cost considerations.* Because the Commission finds the Agreements are Competitive products, the Postal Service must also show that each Agreement covers its attributable costs, does not cause Market Dominant products to subsidize

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<sup>6</sup> MC2023-21 and CP2023-20 Request, Attachment D at 2; MC2023-23 and CP2023-22 Request, Attachment D at 2; MC2023-25 and CP2023-24 Request, Attachment D at 2; MC2023-27 and CP2023-26 Request, Attachment D at 2.

<sup>7</sup> MC2023-21 and CP2023-20 Request, Attachment D at 3; MC2023-23 and CP2023-22 Request, Attachment D at 3; MC2023-25 and CP2023-24 Request, Attachment D at 3; MC2023-27 and CP2023-26 Request, Attachment D at 3.

<sup>8</sup> 39 C.F.R. § 3040.132(a) requires the Postal Service to “[e]xplain 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[.]” 39 C.F.R. § 3040.132(a). The Postal Service incorrectly recites the applicable requirements (as reorganized) by asserting that the Postal Service is required to “[d]emonstrate why the change is in accordance with the policies and applicable criteria of the Act.” MC2023-21 and CP2023-20 Request, Attachment D at 1; MC2023-23 and CP2023-22 Request, Attachment D at 1; MC2023-25 and CP2023-24 Request, Attachment D at 1; MC2023-27 and CP2023-26 Request, Attachment D at 1. Nevertheless, the Commission finds that the information provided by the Postal Service contains the information required by 39 C.F.R. § 3040.132(a).

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 and 3035.107. As long as the revenue generated by each Agreement exceeds its attributable costs, that Agreement 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 an Agreement 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 prices during the first year of each Agreement should cover the Agreement's attributable costs. 39 U.S.C. § 3633(a)(2). The Agreements' prices adjust with changes to generally applicable rates.<sup>9</sup> Combined with sufficiently high first-year cost coverage, the Agreements' price adjustments will help ensure that the Agreements will cover attributable costs in subsequent years. For these reasons, the Commission also finds that the Agreements 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 Agreements are 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 39 C.F.R. § 3035.107(c). Accordingly, a preliminary review of the Agreements indicates they are consistent with section 3633(a).

The Commission will review the Agreements' 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.* The Agreements contain provisions that accommodate changes to classifications of general applicability for competitive products adopted by

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<sup>9</sup> See MC2023-21 and CP2023-20 Request, Attachment B at 7; MC2023-23 and CP2023-22 Request, Attachment B at 7; MC2023-25 and CP2023-24 Request, Attachment B at 7; MC2023-27 and CP2023-26 Request, Attachment B at 7.

the Commission in Docket No. MC2022-82.<sup>10</sup> The Commission has reviewed the provisions in question and determined that the classification changes do not affect the ability of the Agreements to comply with 39 U.S.C. § 3633(a).

Each Agreement also contains a provision that allows the parties to extend the Agreement for two 90-day periods if a successor agreement is being prepared and the Commission is notified at least 7 days prior to the Agreement's expiration date.<sup>11</sup> During the extension periods, prices will be adjusted as described in the Agreements.<sup>12</sup> The Commission finds the two 90-day extension periods are reasonable because: (1) prices are automatically adjusted in the extension period; and (2) the extension(s) should assist the Postal Service's contract negotiations by providing additional flexibility.

If any of the Agreements is terminated prior to its scheduled expiration date, the Postal Service shall promptly file notice of such termination with the Commission in the appropriate dockets.

Section IV contains a list of the docket numbers associated with each Postal Service Request, the title and date of the Postal Service's filing, the term of the Agreement, and a brief summary of the comments received. The Agreements filed in the dockets listed in Section IV are approved as new products, and the Commission approves the prices for those products.

Revisions to the competitive product list and the Mail Classification Schedule appear below the signature of this Order and are effective immediately.

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<sup>10</sup> See, e.g., MC2023-21 and CP2023-20 Request, Attachment B at 2 nn.1-4, 7 nn.5-7. See Docket Nos. MC2022-81 and MC2022-82, Order Removing USPS Retail Ground From the Competitive Product List and Approving Competitive Classification Changes to First-Class Package Service and Parcel Select, October 28, 2022 (Order No. 6318).

<sup>11</sup> MC2023-21 and CP2023-20 Request, Attachment B at 12; MC2023-23 and CP2023-22 Request, Attachment B at 11; MC2023-25 and CP2023-24 Request, Attachment B at 11; MC2023-27 and CP2023-26 Request, Attachment B at 11.

<sup>12</sup> MC2023-21 and CP2023-20 Request, Attachment B at 7; MC2023-23 and CP2023-22 Request, Attachment B at 7; MC2023-25 and CP2023-24 Request, Attachment B at 7; MC2023-27 and CP2023-26 Request, Attachment B at 7.

#### IV. PRIORITY MAIL EXPRESS, PRIORITY MAIL, FIRST-CLASS PACKAGE SERVICE & PARCEL SELECT CONTRACTS APPROVED

1. *Docket Nos.:* MC2023-21 and CP2023-20; *Filing:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 71 to Competitive Product List and Notice of Filing Materials Under Seal, October 19, 2022. *Term:* The effective date of the Agreement in Docket Nos. MC2023-21 and CP2023-20 is November 9, 2022. See MC2023-21 and CP2023-20 Request, Attachment B at 10. This Agreement is set to expire November 8, 2024. See *id.* *Public Comments:* The Public Representative filed comments on October 21, 2022.<sup>13</sup> No other comments were received. The Public Representative recommends approval of this Agreement and states that in the first year the negotiated prices should generate sufficient revenue to cover costs. MC2023-21 and CP2023-20 PR Comments at 2-3.

2. *Docket Nos.:* MC2023-23 and CP2023-22; *Filing:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 72 to Competitive Product List and Notice of Filing Materials Under Seal, October 20, 2022. *Term:* The effective date of the Agreement in Docket Nos. MC2023-23 and CP2023-22 is November 9, 2022. See MC2023-23 and CP2023-22 Request, Attachment B at 9. This Agreement is set to expire November 8, 2025. See *id.* at 10. *Public Comments:* The Public Representative filed comments on October 24, 2022.<sup>14</sup> No other comments were received. The Public Representative recommends approval of this Agreement and states that in the first year the negotiated prices should generate sufficient revenue to cover costs. MC2023-23 and CP2023-22 PR Comments at 2-3.

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<sup>13</sup> Docket Nos. MC2023-21 and CP2023-20, Public Representative Comments on Postal Service Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 71 to Competitive Product List, October 21, 2022 (MC2023-21 and CP2023-20 PR Comments).

<sup>14</sup> Docket Nos. MC2023-23 and CP2023-22, Public Representative Comments on Postal Service Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 72 to Competitive Product List, October 24, 2022 (MC2023-23 and CP2023-22 PR Comments).



3. *Docket Nos.:* MC2023-25 and CP2023-24; *Filing:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 73 to Competitive Product List and Notice of Filing Materials Under Seal, October 21, 2022. *Term:* The effective date of the Agreement in Docket Nos. MC2023-25 and CP2023-24 is November 9, 2022. See MC2023-25 and CP2023-24 Request, Attachment B at 9. This Agreement is set to expire November 8, 2025. See *id.* at 10. *Public Comments:* The Public Representative filed comments on October 26, 2022.<sup>15</sup> No other comments were received. The Public Representative recommends approval of this Agreement and states that in the first year the negotiated prices should generate sufficient revenue to cover costs. MC2023-25 and CP2023-24 PR Comments at 2-3.

4. *Docket Nos.:* MC2023-27 and CP2023-26; *Filing:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 74 to Competitive Product List and Notice of Filing Materials Under Seal, October 26, 2022. *Term:* The effective date of the Agreement in Docket Nos. MC2023-27 and CP2023-26 is November 9, 2022. See MC2023-27 and CP2023-26 Request, Attachment B at 9. This Agreement is set to expire November 8, 2025. See *id.* at 10. *Public Comments:* The Public Representative filed comments on October 31, 2022.<sup>16</sup> No other comments were received. The Public Representative recommends approval of this Agreement and states that in the first year the negotiated prices should generate sufficient revenue to cover costs. MC2023-27 and CP2023-26 PR Comments at 3-4.

## V. ORDERING PARAGRAPHS

*It is ordered:*

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<sup>15</sup> Docket Nos. MC2023-25 and CP2023-24, Public Representative Comments on Postal Service Request to Add Priority Mail Express, Priority Mail, First-Class Package Service and Parcel Select Contract 73 to Competitive Product List, October 26, 2022 (MC2023-25 and CP2023-24 PR Comments).

<sup>16</sup> Docket Nos. MC2023-27 and CP2023-26, Public Representative Comments on Postal Service Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 74 to the Competitive Product List, October 31, 2022 (MC2023-27 and CP2023-26 PR Comments).

1. The Agreements filed in the dockets listed in Section IV are added to the competitive product list as new products 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 an Agreement's termination with the Commission in the appropriate dockets if that Agreement is terminated prior to the scheduled expiration date.
3. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the changes made in this Order.

By the Commission.

Erica A. Barker  
Secretary

## CHANGE IN 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. MC2023-21 and CP2023-20; MC2023-23 and CP2023-22; MC2023-25 and CP2023-24; MC2023-27 and CP2023-26. 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**

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

Domestic\*

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

71

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

72

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

73

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

74

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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

71

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

72

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

73

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

74

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**2500**

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#### **Negotiated Service Agreements**

**2505**

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#### **Domestic**

**2505.15**

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

- Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 71

Baseline Reference

Docket Nos. MC2023-21 and CP2023-20

PRC Order No. 6323, November 4, 2022

Included Agreements

CP2023-20, expires November 8, 2024

- Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 72

Baseline Reference

Docket Nos. MC2023-23 and CP2023-22

PRC Order No. 6323, November 4, 2022

Included Agreements

CP2023-22, expires November 8, 2025

- Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 73

Baseline Reference

Docket Nos. MC2023-25 and CP2023-24

PRC Order No. 6323, November 4, 2022

Included Agreements

CP2023-24, expires November 8, 2025

- Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 74

Baseline Reference

Docket Nos. MC2023-27 and CP2023-26

PRC Order No. 6323, November 4, 2022

Included Agreements

CP2023-26, expires November 8, 2025