

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 94

Docket No. MC2023-68

Competitive Product Prices
Priority Mail Express, Priority Mail, First-Class Package
Service & Parcel Select Contract 94 (MC2023-68)
Negotiated Service Agreements

Docket No. CP2023-68

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 95

Docket No. MC2023-70

Competitive Product Prices
Priority Mail Express, Priority Mail, First-Class Package
Service & Parcel Select Contract 95 (MC2023-70)
Negotiated Service Agreements

Docket No. CP2023-70

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

(Issued December 14, 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 94 and 95 (Agreements) to the competitive product list. For the reasons discussed below, the Commission approves the Postal Service's requests.

II. BACKGROUND

On November 30, 2022, and December 2, 2022, in accordance with 39 U.S.C. § 3642 and 39 C.F.R. §§ 3020.30-.35,¹ the Postal Service filed requests to add two Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select contracts to the competitive product list, along with supporting documents (Requests). 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). Requests at 1. 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 portions of the Governors' Decision and the

¹ 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.

contract, customer-identifying information, and related financial information remain under seal. *Id.* Attachment F.

The Commission issued notices establishing the dockets, appointing Public Representatives, and providing interested persons with an opportunity to comment on the Requests.²

III. COMMISSION ANALYSIS

The Commission has reviewed the Requests, the contracts, 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 competitors. Requests, Attachment D at 2. The Postal Service states that the contract

² See Docket No. MC2023-67, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 1, 2022; Docket No. MC2023-69, *et al.*, Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, December 5, 2022.

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. *Id.* at 3.

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 requirements³, the comments filed, and the Postal Service's supporting justification, 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 the contracts cover attributable costs, do not cause market dominant products to subsidize competitive products as a whole, and contribute 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 contract exceeds its attributable costs, that contract 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

³ 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.” Requests, 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).

institutional costs. In other words, if a contract 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 rates during the first year of the contracts should cover the contract's attributable costs. 39 U.S.C. § 3633(a)(2). The contracts' prices adjust with changes to generally applicable rates.⁴ Combined with sufficiently high first-year cost coverage, the contracts' price adjustments will help ensure that the contracts will cover attributable costs in subsequent years. For these reasons, the Commission also finds that the contracts 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 contracts 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 contracts indicates they are consistent with section 3633(a).

The Commission will review the contracts' 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 contracts contain provisions that accommodate changes to classifications of general applicability for competitive products adopted by the Commission in Docket No. MC2022-82.⁵ The Commission has reviewed the provisions in question and determined that the classification changes would not affect the ability of the contracts to comply with 39 U.S.C. § 3633(a).

⁴ See, e.g., Docket Nos. MC2023-68 and CP2023-68, USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 94 to Competitive Product List and Notice of Filing Materials Under Seal, November 30, 2022, Attachment B at 7 (MC2023-68 and CP2023-68 Request).

⁵ See, e.g., MC2023-68 and CP2023-68 Request, Attachment B at 2 nn.1-4; *id.* at 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).

The contracts also contain a provision that allows the parties to extend the contracts for two 90-day periods if a successor agreement is being prepared and the Commission is notified at least 7 days prior to each contract's expiration date. See, e.g., MC2023-68 and CP2023-68 Request, Attachment B at 11. During the extension periods, prices will be adjusted as described in the contracts. See, e.g., *id.* at 7. The Commission finds the two potential 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 instant contracts are terminated prior to their 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 docket numbers listed in Section IV. are approved as new products, and the Commission approves the rates 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.

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

1. *Docket Nos.:* MC2023-68 and CP2023-68; *Filing:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 94 to Competitive Product List and Notice of Filing Materials Under Seal, November 30, 2022 (MC2023-68 and CP2023-68 Request). *Term:* The intended effective date of the Agreement in the above-referenced docket is December 19, 2022. See MC2023-68 and CP2023-68 Request, Attachment B at 6. The Agreement is set to expire March 31, 2026. See *id.* at 10. *Public Comments:* The Public Representative

filed comments on December 6, 2022.⁶ 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. MC2023-68 and CP2023-68 PR Comments at 2-3.

2. *Docket Nos.:* MC2023-70 and CP2023-70; *Filing:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 95 to Competitive Product List and Notice of Filing Materials Under Seal, December 2, 2022 (MC2023-70 and CP2023-70 Request). *Term:* The intended effective date of the Agreement in the above-referenced docket is December 19, 2022. See MC2023-70 and CP2023-70 Request, Attachment B at 6-7. The Agreement is set to expire March 31, 2026. *See id. Public Comments:* The Public Representative filed comments on December 12, 2022.⁷ 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. MC2023-70 and CP2023-70 PR Comments at 2-3.

V. ORDERING PARAGRAPHS

It is ordered:

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,

⁶ Docket Nos. MC2023-68 and CP2023-57, Public Representative Comments on Postal Service Request to Add Priority Mail Express, Priority Mail, First-Class Package Service and Parcel Select Contract 94 to the Competitive Product List, December 6, 2022 (MC2023-68 and CP2023-68 PR Comments).

⁷ Docket Nos. MC2023-70 and CP2023-70, Public Representative Comments on Postal Service Request to Add Priority Mail Express, Priority Mail, First-Class Package Service and Parcel Select Contract 95 to the Competitive Product List, December 12, 2022 (MC2023-70 and CP2023-70 PR Comments).

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. MC2023-68 and CP2023-68; MC2023-70 and CP2023-70. 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 Express, Priority Mail, First-Class Package Service & Parcel Select Contract
94

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract
95

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 Express, Priority Mail, First-Class Package Service & Parcel Select Contract 94

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 95

2500 Negotiated Service Agreements

2505 Domestic

2505.15 Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contracts

- Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 94

Baseline Reference

Docket Nos. MC2023-68 and CP2023-68

PRC Order No. 6372, December 14, 2022

Included Agreements

CP2023-68, expires March 31, 2026

- Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 95

Baseline Reference

Docket Nos. MC2023-70 and CP2023-70

PRC Order No. 6372, December 14, 2022

Included Agreements

CP2023-70, expires March 31, 2026