

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

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Tony L. Hammond, Vice Chairman;  
Mark Acton;  
Dan G. Blair; and  
Nanci E. Langley

Competitive Product Prices  
Priority Mail  
Priority Mail Contract 29

Docket No. MC2011-3

Competitive Product Prices  
Priority Mail Contract 29 (MC2011-3)  
Negotiated Service Agreement

Docket No. CP2011-4

ORDER APPROVING PRIORITY MAIL CONTRACT 29  
NEGOTIATED SERVICE AGREEMENT

(Issued October 29, 2010)

I. INTRODUCTION

The Postal Service seeks to add a new product identified as Priority Mail Contract 29 to the competitive product list. For the reasons discussed below, the Commission approves the Request.

## II. BACKGROUND

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 29 to the competitive product list.<sup>1</sup> The Postal Service asserts that Priority Mail Contract 29 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Postal Service states that prices and classification underlying this contract are supported by Governors’ Decision No. 09-6 in Docket No. MC2009-25. *Id.* The Request has been assigned Docket No. MC2011-3.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2011-4.

*Request.* In support of its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors’ Decision No. 09-6, originally filed in Docket No. MC2009-25, authorizing certain Priority Mail contracts;
- Attachment B—a redacted copy of the contract;
- Attachment C—a proposed change in the Mail Classification Schedule competitive product list;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and supporting documents under seal.

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<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 29 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, October 4, 2010 (Request).

In the Statement of Supporting Justification, Brian G. Denny, Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Mr. Denny contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

A redacted version of the specific Priority Mail Contract 29 is included with the Request. The contract will become effective on the day that the Commission provides all necessary regulatory approvals. It is terminable upon 30 days' notice by a party, but could continue for 3 years. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.*, Attachment D.

The Postal Service filed much of the supporting materials, including the specific Priority Mail Contract 29, under seal. It maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. *Id.*, Attachment F. It also requests that the Commission order that the duration of such treatment of all customer-identifying information be extended indefinitely, instead of ending after 10 years. *Id.* at 7.

In Order No. 556, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>2</sup> On October 18, 2010, Chairman's Information Request No. 1 (CHIR No. 1) was issued to

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<sup>2</sup> Notice and Order Concerning the Addition of Priority Mail Contract 29 to the Competitive Product List, October 5, 2010 (Order No. 556).

obtain additional information on the contract costs. The Postal Service filed its response on October 25, 2010<sup>3</sup>.

### III. COMMENTS

Comments were filed by the Public Representative.<sup>4</sup> No comments were submitted by other interested parties. The Public Representative states that each applicable element of 39 U.S.C. 3633(a) appears to be met by this additional Priority Mail Contract 29. *Id.* at 2. He also affirms that the Postal Service's filing complies with applicable Commission rules. *Id.* at 1-2.

The Public Representative also believes that the Postal Service has provided appropriate justification for maintaining confidentiality of the redacted information. *Id.* at 2. He affirms that the pricing formula in the instant contract comports with the provisions of Governors' Decision No. 09-6 for Priority Mail Contracts and thereby complies with the pertinent requirements of title 39. *Id.* at 1-3.

### IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

*Statutory requirements.* The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 29 to either the market dominant product list or to the competitive product list. 39 U.S.C. 3642. As part of this responsibility, the

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<sup>3</sup> Responses of the United States Postal Service to Chairman's Information Request No. 1; see also Response of the United States Postal Service to Chairman's Information Request No. 1, question 1 filed under seal, October 25, 2010. The Postal Service filed an accompanying Motion of the United States Postal Service for Late Acceptance of Responses to Chairman's Information Request No. 1, October 25, 2010. The motion is granted.

<sup>4</sup> Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 29 Negotiated Service Agreement to the Competitive Products List, October 12, 2010 (Public Representative Comments).

Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products.

39 U.S.C. 3633.

*Product list assignment.* In determining whether to assign Priority Mail Contract 29 as a product to the market dominant product list or the competitive product list, the Commission must consider whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1).

If so, the product will be categorized as market dominant. The competitive category of products consists of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns.

39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, ¶ (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the competitive product list to effectuate the negotiated contractual terms. *Id.* ¶ (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this

market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* ¶ (h).

No commenter opposes the proposed classification of Priority Mail Contract 29 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 29 is appropriately classified as a competitive product and should be added to the competitive product list.

*Cost considerations.* The Postal Service presents a financial analysis showing that Priority Mail Contract 29 covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products.

CHIR No. 1 sought information concerning Priority Mail advertising campaigns and the allocation of such costs to various Priority Mail products. In response, the Postal Service contends that the target audience for Priority Mail advertising is retail customers and small commercial customers, for whom “shipping convenience is an important feature,” and not larger commercial customers “where price and service, rather than convenience, are the most important drivers of shipping decisions.” Response to CHIR No.1, question 2. The Postal Service states that the FY 2009 advertising campaign, which focused on the convenience of Postal Service shipping products such as the Flat-Rate Box, was not directed to large companies or to companies that did not use Flat-Rate Boxes. *Id.*, question 3. Given the magnitude of the FY 2009 advertising expense, the Postal Service “separately accounted for [such cost] when evaluating contracts.”<sup>5</sup>

The Commission does not find the Postal Service’s arguments in response to CHIR No. 1 persuasive. Priority Mail advertising costs are product specific costs and, absent a more compelling justification, should be allocated proportionally to all Priority

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<sup>5</sup> *Id.* The Postal Service indicates, however, that it lacks data to allocate advertising costs among various types of Priority Mail customers or products. See also *id.*, question 4.

Mail volumes. Future Priority Mail contracts should include such an allocation. The Postal Service may, if it wishes, petition for a rulemaking proceeding proposing a different allocation methodology. The record in this proceeding, however, is not sufficient to justify a departure from the longstanding practice regarding product specific costs.

For purposes of its review, the Commission allocated Priority Mail unit advertising costs to the instant contract. This adjustment does not alter the expectation that the contract will meet the requirements of 39 U.S.C. 3633(a).

In conclusion, based on the data submitted, the Commission finds that Priority Mail Contract 29 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of Priority Mail Contract 29 indicates that it comports with the provisions applicable to rates for competitive products.

*Other considerations.* The Postal Service shall promptly notify the Commission if Priority Mail Contract 29 terminates earlier than the proposed term, but no later than the actual termination date. The Commission will then remove Priority Mail Contract 29 from the competitive product list.<sup>6</sup>

Within 30 days of the expiration of the instant contract in Docket No. CP2011-4, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

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<sup>6</sup> In its application for non-public treatment, the Postal Service requests an indefinite extension of non-public treatment of customer-identifying information. The Commission has consistently denied similar requests and reiterated its findings in a recent order. See Docket Nos. MC2011-1 and CP2011-2, Order Approving Express Mail Contract 9 Negotiated Service Agreement, October 20, 2010, at 6-7 (Order No. 563).

In conclusion, the Commission approves Priority Mail Contract 29 as a new product. The revision to the competitive product list is shown below the signature of this Order and is effective upon issuance of this Order.

V. ORDERING PARAGRAPHS

*It is Ordered:*

1. Priority Mail Contract 29 (MC2011-3 and CP2011-4) is added to the competitive product list as a new product under Negotiated Service Agreements, Domestic.
2. The Postal Service shall notify the Commission if the instant contract terminates prior to the scheduled termination date as discussed in this Order.
3. Within 30 days of the expiration of the instant contract in Docket No. CP2011-4, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.
4. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Shoshana M. Grove  
Secretary

CHANGE IN MAIL CLASSIFICATION SCHEDULE  
CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified at 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. These changes are in response to Docket Nos. MC2011-3 and CP2011-4. The Commission uses two main conventions when making changes to the product lists. The addition of text is indicated by underscoring. Deleted text is indicated by a strikethrough.

Part B—Competitive Products

2000 Competitive Product List

\* \* \* \* \*

Negotiated Service Agreements

Domestic

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Priority Mail Contract 29 (MC2011-3 and CP2011-4)

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