

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

Before Commissioners:

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

Competitive Product Prices
Priority Mail Contracts
Priority Mail—Non-Published Rates

Docket No. MC2011-15
Docket No. CP2011-51

ORDER APPROVING ADDITION OF PRIORITY MAIL—NON-PUBLISHED RATES 1
TO THE COMPETITIVE PRODUCT LIST

(Issued February 3, 2011)

I. INTRODUCTION

On December 17, 2010, the Postal Service filed a request with the Commission seeking to add Priority Mail—Non-Published Rates (Priority Mail—NPR) to the competitive product list as a product not of general applicability.¹ The Request was filed pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* For the reasons discussed below, the Commission approves the Request.

Priority Mail—NPR is proposed as a new competitive product not of general applicability in which a range of approved prices are established for negotiated service

¹ Request of the United States Postal Service Concerning Priority Mail—Non-Published Rates and Notice of Filing Materials Under Seal, December 17, 2010 (Request).

agreements utilizing Priority Mail. The intent is to increase volume and revenue by offering competitive, customized, Priority Mail prices while reducing the cycle time associated with executing individual pricing agreements. *Id.*, Attachment 1, Attachment B. The Postal Service asserts that this new product is modeled after the Global Expedited Package Services—Non-Published Rates product that the Commission approved in Order No. 593.²

The minimum and maximum possible Priority Mail—NPR prices that may be offered through negotiated service agreements are established by Governors' Decision No. 10-6 and appear in Attachment B of the decision. Request, Attachment 1. The range of prices is confidential and has been filed under seal.

The Governors note that under the Postal Accountability and Enhancement Act (PAEA) of 2006, prices for competitive products must cover each product's attributable costs, not result in subsidization by market dominant products, and enable all competitive products to contribute an appropriate share of institutional costs. The Governors have determined that agreements entered into that adhere to the methodology prescribed in the Governors' Decision are appropriate and meet these applicable statutory and regulatory requirements. *Id.*

Contracts may be executed for a period of 1 year, with an option of renewal for 1 additional year. Contracts may be terminated by either party on 30 days' notice. *Id.*, Attachment 1, Attachment B.

A model contract is included with the Request. *Id.*, Attachment 2. Among other things, the model contract provides for minimum mailer commitments, customized prices applicable to individual customers, and an annual adjustment clause, which specifies that if a contract enters a second year prices will be adjusted based on the most recent average increase in prices of general applicability for Priority Mail retail.

² Docket Nos. MC2010-29 and CP2010-72, Order Approving Postal Service Request to Add Global Expedited Package Services—Non-Published Rates 1 to the Competitive Product List, November 22, 2010 (Order No. 593).

II. BACKGROUND

In Order No. 616, the Commission gave notice of Docket Nos. MC2011-15 and CP2011-51, appointed a Public Representative, and provided interested persons with an opportunity to comment.³ Comments were filed by the Public Representative.⁴ No other interested person submitted comments. Reply comments were filed by the Postal Service.⁵

On December 30, 2010, the Commission issued Chairman's Information Request No. 1 to obtain additional information on the Priority Mail—NPR product.⁶ The Postal Service provided its responses on January 7, 2011.⁷

On January 13, 2011, the Postal Service filed notice of an updated price floor and supporting documentation.⁸ The updated price floor reflects cost information filed in Docket No. ACR2010 and updated inflation figures.

III. COMMENTS

The Public Representative generally supports the concept of creating a Priority Mail contract product group, but expresses several reservations with the instant Request. PR Comments at 2-3.

The Public Representative states that prior to approving Global Expedited Package Services (GEPS)—Non-Published Rates, the product upon which the instant proposal is based, the Commission had sufficient experience determining whether

³ Notice and Order Concerning Request to Add Priority Mail Non-Published Rates to the Competitive Product List, December 21, 2010 (Order No. 616).

⁴ Public Representative Comments in Response to Request of United States Postal Service Concerning Priority Mail Non-Published Rates, January 11, 2011 (PR Comments).

⁵ Reply Comments of the United States Postal Service, January 18, 2011 (Postal Service Reply Comments).

⁶ Chairman's Information Request No. 1, December 30, 2010 (CHIR No. 1).

⁷ Response of the United States Postal Service to Chairman's Information Request No. 1, January 7, 2011.

⁸ Notice of the United States Postal Service of Filing Updated Price Floor Under Seal for Priority Mail—Non-Published Rates, January 13, 2011.

individual GEPS contracts were functionally equivalent. The Commission first had approved contracts as individual products and grouped all functionally equivalent products under one umbrella heading within the competitive product list before approving the non-published rates approach. The Public Representative contends that the Commission should require the intermediate step of grouping individual Priority Mail contracts under one umbrella heading, to provide experience with determining whether individual contracts are in fact functionally equivalent, prior to approving Priority Mail—NPR. Thus, he contends that approval of the Request is premature. *Id.* at 3-5.

The Public Representative also expresses concern that mailers entering into Priority Mail—NPR contracts may not be similarly situated. He suggests adding revenue or volume requirements to achieve this goal. *Id.* at 5-7. He also questions whether existing Priority Mail negotiated service agreement partners will qualify for new Priority Mail—NPR agreements. *Id.* at 7-8. Finally, he contends that a minimum volume commitment should appear in the model contract. *Id.* at 8.

The Postal Service asserts that its Request is not premature and that its experience with more than 40 Priority Mail contracts filed with the Commission and others currently being developed provide significant experience supporting a more streamlined contracting approach. Postal Service Reply Comments at 1-2. The Postal Service argues that in a competitive market, customers may differ in terms of market position and mailing profiles, but its development of a range of approved prices satisfies applicable statutory requirements. The Postal Service points out that individual contracts should have similar market and cost characteristics, but that this does not apply to individual customers. *Id.* at 2. Finally, the Postal Service explains that customers must meet the minimum volume requirements for Commercial Plus Pricing eligibility.⁹ *Id.* at 4.

⁹ The Commission will add this requirement to the draft Mail Classification Schedule (MCS).

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the contract, the accompanying financial analysis provided under seal, responses to CHIR No. 1, and comments filed by the Public Representative and the Postal Service.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail—NPR to either the market dominant product list or to the competitive product list. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the 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—NPR 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 3 ¶ (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 customers using Priority Mail contracts have commented on the Postal Service's inability to confirm rates and terms because of the current regulatory process and related business risks of making changes based on contract terms prior to confirmation. *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).

Having considered the statutory requirements, the support offered by the Postal Service, and the status of Priority Mail as an established competitive product, the Commission finds that Priority Mail—NPR is appropriately classified as a competitive product and should be added to the competitive product list.

Commenter concerns. The Public Representative contends that the Postal Service's Request is premature. He argues that additional time is necessary to develop experience in determining whether individual Priority Mail contracts are functionally equivalent and warrant being consolidated into one Priority Mail—NPR product.

The Postal Service has filed more than 30 Priority Mail contracts. The Commission has ample experience with Priority Mail products, including the underlying financial data filed in support of such products. Moreover, the instant proposal addresses the flaws that accompanied the Postal Service's initial effort to establish a Priority Mail contract group as a separate (umbrella) product.¹⁰

Specifically, the financial model provided in the instant docket is designed to ensure that each Priority Mail—NPR contract will cover its cost. Further, that model

¹⁰ See Docket No. MC2009-25, Request of the United Postal Service to Add Priority Mail Contract Group to Competitive Product List, May 19, 2009. In Order No. 226, the Commission rejected the proposed Priority Mail Contract group due to, among other things, significant differences among the contracts precluding a finding that such contracts were functionally equivalent. Docket Nos. MC2009-25, CP2009-30 through CP2009-34, Order No. 226, Order Concerning Priority Mail Contracts 6 through 10, June 19, 2009, at 9-10.

appears to be tailored for contracts exhibiting similar cost characteristics. Finally, the use of the standardized model contract will aid consistency, simplify negotiations with potential mailers, and likely result in all Priority Mail—NPR contracts exhibiting similar market characteristics. Thus, notwithstanding the Public Representative’s concerns, the Commission finds that the Postal Service’s proposal to streamline the approval process for Priority Mail contracts is appropriate at this time.

The Public Representative also suggests adding cost or revenue requirements to the Priority Mail—NPR contracts for the purpose of ensuring that mailers entering into agreements are similarly situated. PR Comments at 5-7. The Postal Service contends that “each individual *contract* should have similar market and cost characteristics, not each individual *customer*.” Postal Service Reply Comments at 2. The Commission finds that it is not necessary for customers to be similarly situated to take advantage of Priority Mail—NPR contracts.

Cost considerations. The Postal Service proposal is designed to ensure that each Priority Mail—NPR contract satisfies, at least preliminarily, 39 U.S.C. 3633(a). The Commission has reviewed the range of rates that will be available and the pricing methodology applicable to the contracts and finds that each contract within Priority Mail—NPR, and therefore the entire Priority Mail—NPR product, 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—NPR indicates that it comports with the provisions applicable to rates for competitive products.

Future filings. So long as the model contract and the financial model that the Commission has reviewed remain in use, each individual contract should comply with title 39. Thus, the Commission considers the contract template and the financial model to be critical parts of the classification being approved. Any change to the contract

template or to the financial model must be approved in advance by the Commission pursuant to 39 CFR part 3015.¹¹

A presumptive benefit of the new methodology and process for implementing Priority Mail negotiated service agreements approved in this Order is that the Postal Service will be able to implement Priority Mail—NPR contracts more quickly. Each Priority Mail—NPR contract must be filed with the Commission within a reasonable time, e.g., 10 days of its effective date (including modified or renewed contracts). To facilitate these filings, each contract must bear a unique serial number, which shall be noted in the title of the notice filing the contract.¹² In addition, the notice shall indicate the effective dates of each agreement. The contracts and filings related thereto are to be filed in Docket No. CP2011-51.

Other considerations. The Postal Service shall promptly notify the Commission if a Priority Mail—NPR contract terminates earlier than the proposed term, but no later than the actual termination date. The Postal Service also shall notify the Commission of new termination dates for contracts that have been renewed or extended.

Within 30 days of the expiration of a contract, the Postal Service shall file the annual (contract year) costs, volumes, and revenues disaggregated by weight and zone associated with the contract.

In conclusion, the Commission approves Priority Mail—NPR as a new product. Structurally, a group titled Priority Mail—Non-Published Rates will be added to the MCS. The product Priority Mail—Non-Published Rates 1 (MC2011-15 and CP2011-51) will

¹¹ The Commission understands that inputs to the financial model may change without need for Commission review. Also, when there is a change in rates or classifications of general applicability that affects more than the input sheet of the financial, the Postal Service will need to file a complete updated model pursuant to 39 CFR part 3015. Because the Postal Service will make subsequent filings to change Priority Mail—NPR rates, the Commission will label the instant filing Priority Mail—Non-Published Rates 1 to distinguish it from subsequent filings. The latter would be numbered consecutively, e.g., Priority Mail—Non-Published Rates 2, etc.

¹² If multiple Priority Mail—Non-Published Rates contracts are filed simultaneously, the title of the notice would indicate the range of serial numbers being filed. The body of the notice would identify each serial number and, as noted below, the effective date of each contract.

appear under this heading. 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. A category titled Priority Mail—Non-Published Rates shall be added to the competitive product list. A product titled Priority Mail—Non-Published Rates 1 (MC2011-15 and CP2011-51) shall be added to the competitive product list as a new product under Negotiated Service Agreements, Domestic, Priority Mail—Non-Published Rates.
2. Changes in rates due to changes to the model contract and/or changes to the financial model must be approved in advance by the Commission pursuant to 39 CFR part 3015.
3. A copy of each contract along with the financial model inputs used to generate rates for each contract must be filed with the Commission within a reasonable time, *e.g.*, 10 days of the effective date of the contract.
4. Whenever the Postal Service notifies a mailer of a change in rates pursuant to Article II of the model contract, the Postal Service shall file with the Commission a copy of the notice along with the financial model inputs used to generate the new rates.

5. The Postal Service shall notify the Commission of the effective dates of each contract. If any of the contracts terminates earlier than scheduled, the Postal Service shall inform the Commission prior to the new termination date. If any contract is renewed, the Postal Service shall inform the Commission of the new effective dates.
6. Within 30 days of the expiration of each contract, the Postal Service shall file costs, volumes, and revenues disaggregated by weight and zone associated with that contract, including any penalties paid.
7. The Secretary shall arrange for the publication in the *Federal Register* of an updated product list reflecting the change made in the body of this Order.

By the Commission.

Ruth Ann Abrams
Acting 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. MC2011-15 and CP2011-51. 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

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Negotiated Service Agreements

Domestic

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Priority Mail—Non-Published Rates

Priority Mail—Non-Published Rates 1 (MC2011-15 and CP2011-51)

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