

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

Restructuring First-Class Mail Parcel
Product Offerings

Docket No. MC2011-22

ORDER ADDING LIGHTWEIGHT COMMERCIAL PARCELS
TO THE COMPETITIVE PRODUCT LIST

(Issued April 6, 2011)

I. INTRODUCTION

On February 24, 2011, the Postal Service filed a request with the Commission to modify the market dominant and the competitive product lists pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*¹ The Postal Service proposes to (1) remove commercial First-Class Mail Parcels from the market dominant product list, and (2) add a new product, provisionally titled “Lightweight Commercial Parcels”, to the competitive product list. The Postal Service’s Request is granted.

¹ Request of the United States Postal Service Under Section 3642, February 24, 2011 (Request).

II. BACKGROUND

On February 25, 2011, the Commission established Docket No. MC2011-22 to consider this Request, set deadlines for comments, appointed a Public Representative to represent the interests of the general public, and noticed this proceeding in the *Federal Register*.²

On March 16, 2011, the Public Representative filed comments.³

The Chairman issued one information request.⁴ On March 24, 2011, the Postal Service filed its response.⁵

Product descriptions. The First-Class Mail Parcels product appearing on the market dominant product list currently includes four price categories: Commercial Plus, Commercial Base, Retail, and Keys and Identification Devices. The Commercial Plus, Commercial Base, and Retail price categories were recently defined by the Postal Service and approved by the Commission in Docket No. R2011-2.⁶

The Postal Service seeks to remove the Commercial Plus and Commercial Base price categories from the market dominant First-Class Mail Parcels product and place these price categories into a newly created product, Lightweight Commercial Parcels, appearing on the competitive product list.⁷ This proposal also effectively creates a new

² Notice and Order Concerning Proposed Changes to the Market Dominant and Competitive Product Lists, February 25, 2011 (Order No. 681).

³ Public Representative Comments in Response to Order No. 681, March 16, 2011 (PR Comments).

⁴ Chairman's Information Request No. 1, March 18, 2011 (CHIR No. 1).

⁵ Responses of the United States Postal Service to Questions 1-4 of Chairman's Information Request No. 1, March 24, 2011 (Response to CHIR No. 1).

⁶ United States Postal Service Notice of Market-Dominant Price Adjustment, January 13, 2011; Order Revising Postal Service Market Dominant Price Adjustments, February 16, 2011 (Order No. 675).

⁷ The transfer between product lists of "subclasses and other subordinate units" is allowed pursuant to 39 U.S.C. 3642(c).

First-Class Mail Parcels market dominant product consisting of the existing Retail and Keys and Identification Devices price categories.⁸

The new Lightweight Commercial Parcels competitive product includes most, but not all, of the attributes of the existing Commercial Plus and Commercial Base, First-Class Mail market dominant price categories. Lightweight Commercial Parcels may be entered as single-piece, or presorted to ADC, 3-digit, or 5-digit. Mailing at presort prices requires payment of an annual fee. The product may be entered as single-piece within the collection mailstream or in bulk through a business mail entry unit.

Lightweight Commercial Parcels, unlike the First-Class Mail product, is not sealed against inspection. Letters subject to the Private Express Statutes may not be mailed at Lightweight Commercial Parcels prices. However, First-Class Mail or Standard Mail pieces may be attached to or enclosed within Lightweight Commercial Parcels, subject to payment of additional postage.

The delivery standard for this product will be 1 to 3 days within the contiguous United States and 1 to 5 days outside this area. Mailpieces will be moved by a combination of surface and air transportation. This product will not be deferrable.

Undeliverable as addressed mailpieces are entitled to forwarding or return to sender at no additional charge. In addition, many ancillary special services are available with this product.

Two price categories are proposed for Lightweight Commercial Parcels: Commercial Plus and Commercial Base. Commercial Plus mailpieces must weigh at least 3.5 ounces, but less than 16 ounces. There is no minimum volume requirement for entering single-piece mailpieces. Mailpieces entered as ADC, 3-digit, or 5-digit must be in a total mailing of at least 500 pieces. Commercial Plus mailers must commit to mailing 5,000 pieces annually. A \$0.05 surcharge applies to ADC or 3-digit not barcoded mailpieces.

⁸ A substantial change to an existing product may in effect create an entirely new product requiring review of applicable statutes.

Commercial Base mailpieces may weigh up to 13 ounces. Mailpieces entered as single-piece must be in a total mailing of at least 200 pieces or 50 pounds. Mailpieces entered as ADC, 3-digit, or 5-digit must be in a total mailing of at least 500 pieces. A \$0.05 surcharge applies to ADC or 3-digit not barcoded or nonmachinable mailpieces.

III. COMMENTS

The Public Representative was the only interested person to file comments. The Public Representative contends that commercial First-Class Mail Parcels should be removed from the market dominant product list and added to the competitive product list. PR Comments at 4. He reviews the Postal Service's Request and cites to Postal Service assertions that Lightweight Commercial Parcels will cover attributable costs, will not be cross-subsidized by market dominant products, and should assist competitive products as a whole in meeting the 5.5 percent contribution to institutional costs requirements. See 39 U.S.C. 3633(a). He also cites to Postal Service explanations of why Lightweight Commercial Parcels fulfills the market power tests for classifying products as competitive. See 39 CFR 3020.32(d).

IV. COMMISSION ANALYSIS

Statutory requirements. In determining whether to approve the transfer of the Commercial Plus and Commercial Base price categories into a new Lightweight Commercial Parcels product on 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. If the transfer is

approved, the Commission must also consider the effect of the transfer on the reconstituted First-Class Mail Parcels product.

Product list assignments. The Postal Service explains that the current commercial First-Class Mail Parcels price categories, that will be included in the new Lightweight Commercial Parcels product, are generally used for fulfillment purposes by businesses selling merchandise, prescription drugs, and other items. Request, Attachment B at 4. The Postal Service asserts that except for expedited service, these businesses have some flexibility on delivery times, and use this flexibility to secure better rates. *Id.*

The Postal Service indicates that the under 1-pound parcels' market consists of three segments, with varying number of days from acceptance to delivery: (1) 2- to 3-day air, (2) consolidator ground, and (3) commercial carrier ground. The Postal Service provides estimates of market share by volume and by revenue in its Request for each market segment. *Id.*

The Postal Service acknowledges that it has captured most of the market share for 2- to 3-day air service, and that raising prices would not likely result in a significant loss of business to competitors. *Id.* at 4-5. However, the Postal Service states that the same businesses that provide 2- to 3-day air service also provide consolidator ground service. To the Postal Service, it appears that these businesses are focusing on capturing market share through their consolidator ground services. *Id.* at 5.

The Postal Service states that providers of consolidator ground services offer delivery service commitments comparable to the Postal Service's First-Class Mail Parcel service at prices lower than offered by the Postal Service. Consolidators achieve lower prices by using their own transportation and processing, and reliance on the Postal Service for last-mile delivery. *Id.* The Postal Service estimates that consolidator ground service provided by competitors to the Postal Service account for one-third of the volume of under 1-pound fulfillment parcels. Given this market share, and presumed lower prices, the Postal Service contends that it does not exercise sufficient

market power over this market segment such that it can raise prices significantly without risking the loss of a significant level of business to competitors. *Id.* at 6.

The Postal Service believes that commercial carrier ground service offers a comparable alternative to the Postal Service's commercial First-Class Mail service. *Id.* at 6-7. It states that commercial carrier ground service captures about one-fifth of the market volume of under 1-pound fulfillment parcels, and implies that 92 percent of these parcels arrive at their destination within 1 to 3 days.

Based on its review of the record in this proceeding, the Commission concludes that Lightweight Commercial Parcels may be added to the competitive product list. In reaching this conclusion, the Commission has taken into account the Postal Service's dominance in the 2- to 3-day air segment of this market. The 2- to 3-day segment represents 49 percent of the total under 1-pound fulfillment parcels market. The Postal Service estimates that it now has a 44 percent market share by volume and a 34 percent market share by revenue of the total under 1-pound fulfillment parcels market. *Id.* at 4. These market shares indicate the presence of significant competition in the marketplace.

In addition, there is no opposition to the Postal Service's Request. Two opportunities to comment were provided. Only the Public Representative filed comments, which were supportive of the Request. While not dispositive, the absence of opposition suggests that shippers have alternatives available to satisfy their needs.

A product that is subject to the Private Express Statutes may not be transferred from the market dominant product list. 39 U.S.C. 3642(b)(2). The Postal Service asserts that "the contents of Lightweight Commercial Parcels will be outside the scope of the letter monopoly, or for any letters contained in such parcels, within the scope of the exceptions or suspensions to the Private Express Statutes." Request, Attachment B at 7.

To allow transfer of commercial First-Class Mail Parcels to the competitive Lightweight Commercial Parcels product, the Postal Service proposes to place content restrictions on the Lightweight Commercial Parcels product, which prohibit the product

from containing items classified as “letters” under the Private Express Statutes. *Id.* The Postal Service notes that if a letter is included that does not fall under an exception or suspension to the Private Express Statutes, additional postage may be required. By placing content restrictions on Lightweight Commercial Parcels, the Postal Service has satisfied the requirement which prohibits transferring a product from the market dominant product list that is subject to the Private Express Statutes.

Additional considerations. 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 describes two categories of enterprises in the private sector engaged in the delivery of similar products. Request, Attachment B at 8. The Postal Service considers FedEx and UPS as major parcels competitors for both air and ground service. It also discusses consolidators whose objective is to provide lower cost and faster alternatives, accomplished through zone skipping, than offered by the Postal Service.

When discussing the views of those who may use Lightweight Commercial Parcels, the Postal Service contends that since there will be no change in service standards, mailers may focus on price. *Id.* at 8-9. The Postal Service asserts that the price of single-piece First-Class Mail Parcels will effectively act as a price cap on Lightweight Commercial Parcels. *Id.* at 9. Mailers of Lightweight Commercial Parcels weighing 13 ounces or less would have the option, among others of mailing at the Retail First-Class Mail Parcels rates. Thus, the latter rates would serve as a limit on the Postal Service’s ability to increase prices for Lightweight Commercial Parcels.

Finally, the Postal Service contends that there likely would not be a disproportionate impact on small businesses due to the Request because of the lower volumes of parcels mailed by small businesses. *Id.*

Based on the record before it, the Commission finds no reason to disagree with the Postal Service’s analysis of 39 U.S.C. 3642(b)(3) concerning the impact on private

sector competitors, customers, and small businesses. No comments were filed indicating a disproportionate impact on these groups.

As a consequence of the transfer, the existing market dominant First-Class Mail Parcels product will consist only of the Retail and Keys and Identification Devices price categories. A request has not been made to change the market dominant characterization of the reconstituted First-Class Mail Parcels product. On this record, there is no apparent reason for the Commission to consider one.

Provisions applicable to rates for competitive products. The Commission must examine each competitive product to ensure that: (1) competitive products are not subsidized by market dominant products; (2) each competitive product covers its attributable costs; and (3) competitive products collectively cover an appropriate share (5.5 percent) of institutional costs. 39 U.S.C. 3633(a); 39 CFR 3015.7.

The Postal Service states that in FY 2010, the estimated cost coverage for commercial First-Class Mail Parcels was 109 percent.⁹ Request, Attachment B at 3. Thus, transferring price categories that exhibit greater than 100 percent cost coverage to the competitive product list as a new product implies that the new product should not result in the subsidization of competitive products by market dominant products. The Postal Service also states that with a cost coverage of 109 percent, Lightweight Commercial Parcels will likely cover attributable costs. Finally, the Postal Service defers the question of the affect of Lightweight Commercial Parcels on all competitive products collectively covering an appropriate share of institutional costs until the next time the Commission re-evaluates this determination. *Id.*

In its Request, the Postal Service originally reported a unit cost of \$1.82 and a revenue per piece of \$1.99 for commercial First-Class Mail Parcels. Using these figures, it calculated the 109 percent cost coverage. The Postal Service assumed only entry in bulk through business mail entry units.

⁹ The Postal Service notes that there are no data available for First-Class Mail Commercial Plus Parcels, but contends that the effect, if any, of this price category on cost coverage should be positive. *Id.* n.6.

In response to CHIR No. 1, questions 2 and 3, the Postal Service revised its calculations to reflect a lower revenue per piece of \$1.96 and a higher cost per piece of \$1.89. This leads to a lower cost coverage of 104 percent. These changes reflect the FY 2010 entry of commercial First-Class Mail Parcels—approximately 66 percent of were entered through the collection mailstream, while approximately 34 percent were entered in bulk through a business mail entry unit. Response to CHIR No. 1, question 3. The Postal Service should ensure that future calculations used to support requests reflect an accurate analysis of the costs and revenues.

The Commission finds the best estimate of cost coverage for commercial First-Class Mail Parcels is 104 percent. This is the appropriate figure to use to evaluate consistency with 39 U.S.C. 3633(a) and with the provisions of 39 CFR 3015.7. The record demonstrates that current prices for the commercial First-Class Mail Parcels recover their attributable costs. Commercial First-Class Mail Parcels represent a small share of all competitive products. Therefore, transferring commercial First-Class Mail Parcels to the competitive product list will have little impact on the ability of all competitive products collectively to cover an appropriate share of institutional costs. The total contribution to institutional costs from competitive products in FY 2010 is 7.1 percent of total institutional costs.¹⁰ Adding the commercial First-Class Mail Parcels price categories to the competitive product list would not cause the contribution to institutional costs from competitive products to fall below 5.5 percent of institutional costs. 39 U.S.C. 3633(a)(3). Thus, it follows that the requirement that competitive products are not subsidized by market dominant products is also met.

Consequences of the change. By redefining the First-Class Mail Parcels product to consist only of the existing Retail, and Keys and Identification Devices price categories, the Postal Service has changed the characteristics of the existing First-Class Mail Parcels product. The Postal Service asserts that the redefined product is consistent with the objectives of 39 U.S.C. 3622(b) and the factors of 39 U.S.C.

¹⁰ Docket No. ACR2010, Annual Compliance Determination Report, March 29, 2011, at 140.

3622(c), and does not implicate the processes of 39 U.S.C. 3622(d). Request, Attachment B at 1-2.

The Commission finds that redefined market dominant product appears to comport with applicable statutory provisions, notwithstanding that some factors are implicated by the change. Lightweight Commercial Parcels will not be sealed against inspection and are subject to content restrictions.¹¹ Any mailer of Lightweight Commercial Parcels desiring to mail a parcel sealed against inspection will have to opt for mailing at higher single-piece First-Class Mail or Priority Mail prices. Also, because of content restrictions imposed on the new product, mailers wishing to include letter mail within Lightweight Commercial Parcels would have to pay letter rates on the enclosure.¹² The existing First-Class Mail Parcels product does not have similar content restrictions.

The redefined First-Class Mail Parcels product is estimated to have a cost coverage of 91 percent. Response to CHIR No. 1, question 2(a). Section 3622(c)(2) requires each class or type of mail service to cover its attributable costs and make a reasonable contribution to overhead. While the cost coverage for First-Class Mail in total is sufficiently above 100 percent, each product within a class should cover its attributable costs to maximize efficiency, create predictable and stable rates, and assure adequate revenues. See 39 U.S.C. 3622(b)(1), (2), and (5). The Postal Service states that the cost coverage for the First-Class Mail Parcels product could be brought to 100 percent through above-average price increases. *Id.* at 3. The Commission recommends that the Postal Service take this step during the next general price increase.

¹¹ The Postal Service is also aware of the potential that content restrictions may have an adverse effect on volume for the new commercial Lightweight Commercial Parcels product. *Id.* at 3 n.7.

¹² Invoices, receipts, and advertising that is incidental to and associated with the mailing may be included in Lightweight Commercial Parcels without triggering the requirements of the Private Express Statutes. Request, Attachment B at 7-8.

V. CONCLUSION

The Commission finds that the new Lightweight Commercial Parcels product, consisting of the Commercial Plus and Commercial Base price categories transferred from the market dominant First-Class Mail Parcels product, is appropriately categorized as a competitive product. Lightweight Commercial Parcels is also consistent with the statutory requirements of 39 U.S.C. 3633 for competitive products. Lightweight Commercial Parcels will be added to the competitive product list.

The redefined First-Class Mail Parcels product, consisting of the Retail and Keys and Identification Devices price categories, will remain on the market dominant product list.

The substance of the Mail Classification (MCS) language proposed by the Postal Service representing the new Lightweight Commercial Parcels product and the redefined First-Class Mail Parcels product will be incorporated into the draft MCS.

It is ordered:

1. Lightweight Commercial Parcels is added to the competitive product list as a new product.
2. 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 in Appendix A to 39 CFR part 3020, subpart A—Mail Classification Schedule. These changes reflect the Commission’s order in Docket No. MC2011-22. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Part B—Competitive Products

2000 Competitive Product List

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Lightweight Commercial Parcels

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