

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

Modification of Special Services
Product List

Docket No. MC2022-60

NOTICE AND ORDER CONCERNING POTENTIAL MODIFICATION OF SPECIAL
SERVICES ON THE COMPETITIVE PRODUCT LIST

(Issued May 16, 2022)

I. INTRODUCTION

The Postal Regulatory Commission (Commission) initiates the instant docket to examine the potential need to make a modification to the Mail Classification Schedule (MCS) in order to fulfill the Commission's responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law No. 109-435, 120 Stat. 3198 (2006), the Postal Service Reform Act of 2022, Public Law No. 117-89, 136 Stat. 1127 (2022), and pursuant to 39 CFR 3040 subpart D.¹ Specifically, the Commission seeks information on the Postal

¹ 39 CFR 3040 subpart D contains multiple requirements for proposals of the Commission to modify the Competitive product list, including an indication of whether a proposal would add, move, or remove a product, as well as providing justification supporting the proposal. In this instance, it is not appropriate to include this information, as the proposal is a vehicle to receive information to make a determination of whether a concerted proposed action is required.

Service's recent pilot program in which it added to the accepted payment methods, at specifically-identified Post Offices, in order to allow postal retail customers to exchange payroll and business checks for stored value Gift Cards (Pilot Program). The Commission seeks the information to determine whether the Pilot Program has changed the nature of the Competitive product at issue (Special Services – Greeting Cards and Stationery) to the degree that the Gift Cards price category (or an undefined sub-component) may be categorized as a non-postal product.² A finding that the price category, product, or sub-component is a non-postal product would require its termination.³

II. BACKGROUND

In FY 2014, the Commission approved the Postal Service's sale of Gift Cards⁴ as a product that was "likely to be mailed, similar to greeting cards and stationery" and was often involved in the sale of other postal retail products such as greeting cards.⁵ In the Docket No. MC2014-26 Request, the Postal Service stated that it "d[id] not intend to use th[e] filing as a step into offering banking services," and if any Postal Service proposal should ever offer

² As discussed further below, the Commission, in approving the Gift Cards price category within the Greeting Cards and Stationery product, determined that it was appropriately a postal product (as opposed to a non-postal product).

³ 39 U.S.C. 404(e) details the statutory authority for terminating non-postal products, and the statutory authority is noted in multiple precedents, including a 2010 ruling in the United States Court of Appeals for the District of Columbia Circuit, which noted that "Congress[...] provide[d] that the Postal Regulatory Commission was to conduct a review of 'each nonpostal service offered by the Postal Service' ... to determine whether it should be terminated...." *USPS v. Postal Regul. Comm'n*, 599 F.3d 705, 707 (D.C. Cir. 2010). Additionally, the United States Postal Service Office of Inspector General published a management advisory report in 2012 that stated that the PAEA "repealed the Postal Service's authority to offer 'non-postal services' and prohibited offering any new non-postal services." United States Postal Service, Office of Inspector General, Report No. DA-MA-12-005, 21st Century Post Office: Non-Postal Products and Services, July 16, 2012, at 9, available at <https://www.uspsoig.gov/sites/default/files/document-library-files/2015/DA-MA-12-005.pdf>.

⁴ Gift Cards is a price category within the Gift Cards and Stationery product. The Commission and the Postal Service have both referred to Gift Cards as a product in multiple filings, and for the purposes of this inquiry, the Commission will continue to do so throughout this Order to avoid confusion.

⁵ See Docket No. MC2014-26, Request of the United States Postal Service to Add Gift Cards as a New Price Category in the Greeting Cards and Stationery Product, June 9, 2014, Attachment B at 7 (Docket No. MC2014-26 Request). See also Docket No. MC2014-26, Order Granting Request to Add Gift Cards to the Competitive Product List, August 8, 2014 (Order No. 2145).

banking services, “such proposals would be done in a separate filing.” See Docket No. MC2014-26, Request, Attachment B at 3 n.2.

Following the Postal Service’s publication of the FY 2021 Annual Compliance Report (ACR), the Commission submitted an information request for the Postal Service to provide additional insight regarding a pilot program to allow postal retail customers to cash payroll and business checks in exchange for stored value Gift Cards.⁶

The Postal Service provided a response to Docket No. ACR2021, CIR No. 1 detailing that in FY 2021, the Postal Service initiated such a Pilot Program, stating that it was “merely testing a new form of payment for an established postal product – gift cards.”⁷

The Postal Service initiated the Pilot Program on September 13, 2021, at four Post Office retail locations in response to a request from a stakeholder that identified the program as “an initiative that could potentially be useful for a segment of consumers.”⁸ The Postal Service stated that in order to gain insight into this market, it considered secondary research, including a 2019 survey by the Federal Deposit Insurance Corporation called “How America Banks: Household Use of Banking and Financial Services” as well as USPS Office of Inspector General reports on potential postal financial services. *Id.* question 1.b.

Under the Pilot Program, the additional forms of payment accepted for Gift Cards at the four test sites are payroll or business checks, defined as a printed check with a

⁶ See Docket No. ACR2021, Commission Information Request No. 1, January 7, 2022 (Docket No. ACR2021, CIR No. 1). See also Docket No. ACR2021, Responses of the United States Postal Service to Questions 1-7 of Commission Information Request No. 2, PowerPoint file “CIR.2.Q.4.Pictures of Promo Items.pptx,” February 4, 2022 (Docket No. ACR2021, Response to CIR No. 2).

⁷ See Docket No. ACR2021, Responses of the United States Postal Service to Questions 1-2 of Commission Information Request No. 1, January 14, 2022, question 1.c. (Docket No. ACR2021, Response to CIR No. 1).

⁸ See Docket No. ACR2021, Response to CIR No. 1, questions 1.a.-1.b. The four locations are: Baychester Post Office, 1525 E Gun Hill Road, Bronx, NY 10469; Bailey Crossroads Post Office, 6021 Leesburg Pike, Falls Church, VA 22041; National Capitol (Dorothy Height) Post Office, 2 Massachusetts Ave. NE, Washington, DC 20002; and Baltimore Post Office, 900 E Fayette Street, Baltimore, MD 21233. *Id.* question 1.a. Since all four locations already offered Gift Cards, the Postal Service asserts that minimal training was necessary for the 28 clerks and 8 management staff to allow for the additional form of payment. *Id.* questions 1.o.-1.p. The training was “[i]n partnership with a major postal union” and “consisted of content providing a background of the pilot, ... discussions of check handling processes, standard work instruction for the transaction including Point-of-Sale workflow, and FAQs.” *Id.* question 1.p.

company's name pre-printed, made payable to the customer, and accepted in accordance with Handbook F-101. See Docket No. ACR2021, Response to CIR No. 1, questions 1.a.-1.q.; see *also* Docket No. ACR2021, Response to CIR No. 2, question 5. The customer is charged a fee of \$5.95 for a variable Gift Card up to \$500 (or \$5.95 per Gift Card, if the customer elects to put the value on multiple cards), the total amount loaded on the Gift Card(s) cannot exceed \$500 per day per customer, and no cash is disbursed to the customer. As with the policy for all Gift Card purchases, once the Gift Card is activated it cannot be returned for a refund or credit. See Docket No. ACR2021, Response to CIR No. 1, questions 1.a.-1.q.

While the Pilot Program only accepts business and payroll checks made payable to the customer in connection with the sale of Gift Cards at the four test sites, the Postal Service noted that for many years it has cashed or redeemed salary checks or Money Orders in a limited number of circumstances. See Docket No. ACR2021, Response to CIR No. 2, question 5. Specifically, the Postal Service has been issuing Money Orders since the Civil War, and for the past 50 years, the Postal Service has been cashing Postal Service-issued salary checks and Money Orders at no additional charge. *Id.* The Postal Service also noted that in the last 10 years, and "in cooperation with the United States Treasury, the Postal Service has cashed Treasury checks for a nominal fee." *Id.* It further noted that "[c]ommerical checks have long been accepted as payment for purchase of postage." *Id.*

The Postal Service stated in Docket No. ACR2021, Response to CIR No. 2 that "no new products or services are involved," but the market research referred to in Docket No. ACR2021, Response to CIR No. 1 suggested that the new payment option is targeted specifically at a market looking for financial services. *Compare* Docket No. ACR2021, Response to CIR No. 2, question 6, *with* Docket No. ACR2021, Response to CIR No. 1, question 1.b. The Postal Service's own promotional materials market the product using the language, "Need to 'cash' a check?"⁹ The Postal Service's payment change coupled with

⁹ See Docket No. ACR2021, Response to CIR No. 2, PowerPoint file "CIR.2.Q.4.Pictures of Promo Items.pptx."

changes in the marketing and planned usage of the product have the potential to change the nature of the product, thereby necessitating the examination of the impact of the Pilot Program to the underlying Gift Cards product.

Additionally, although the Postal Service asserts that the Gift Cards product was already approved by the Commission, the approval of the product was based on the premise that the availability of Gift Cards “stimulates demand for postal services” and “enhances the use of the mail.” See Order No. 2145 at 4. The Postal Service’s evidence in Docket No. MC2014-26 demonstrated at the time that the majority of Gift Cards sales not only involved the purchase of other postal items but were more likely to be mailed than Gift Cards purchased elsewhere. *Id.* at 5-6. From September 13, 2021, to January 12, 2022, a total of six Gift Cards were purchased under the Pilot Program (using the business or payroll check payment method) generating a total fee revenue of \$35.70. See Docket No. ACR2021, Response to CIR No. 1, questions 1.d., 1.g., 1.h. Additionally, the Postal Service provided the total fee revenue for the Gift Cards associated with business checks in Quarter 2 of \$5.95, representing one single transaction.¹⁰ The Commission notes that under the current Pilot Program, none of the transactions have involved the sale of other postal products. Furthermore, the Postal Service does not track whether Gift Cards are mailed (regardless of the method of purchase) and has not made an attempt as of yet to determine via surveys or other tools whether customers are likely to mail the Gift Cards purchased under the Pilot Program. See Docket No. ACR2021, Response to CIR No. 2, questions 2-3.

In its FY 2021 Annual Compliance Determination (ACD), the Commission directed the Postal Service to report quarterly information on the Pilot Program, including updates on volume and revenue, as well as future plans for the Pilot Program as long as it remains in effect.¹¹ In addition, the Commission directed the Postal Service to file a notice of termination with the Commission when the Pilot Program ends, including notification no later than 14

¹⁰ See Docket No. ACR2021, Second Response of the United States Postal Service to Commission Requests for Additional Information in the FY 2021 Annual Compliance Determination, May 10, 2022, at 11.

¹¹ Docket No. ACR2021, Annual Compliance Determination, March 29, 2022, at 103.

days after the publication of the ACD of whether the Postal Service is continuing the program past its initially anticipated end date of March 2022. *Id.*

The Postal Service provided a response to the Pilot Program ACD directive, stating that “the Postal Service has continued the pilot program,” and “[n]o final determinations have been reached with regard to ending the pilot, or with regard to any other potential steps that might be taken to modify the pilot.”¹² The Postal Service further stated that it “remains of the view that the pilot program is an appropriate and limited test of an alternative payment method for the established gift card product, which does not implicate the current Mail Classification Schedule, and that no further regulatory action is warranted at this time.” *Id.*

The Commission noted in the ACD that should the Pilot Program remain in effect after March 2022, the Commission would initiate this Mail Classification proceeding pursuant to 39 CFR 3040 to explore and review the issues discussed in the ACD. During this Mail Classification proceeding, the Commission will conduct information gathering to explore and review the product at issue and may determine in the course of this proceeding whether the product at issue, or a defined sub-unit of that product, must be categorized as non-postal and therefore terminate.

III. NOTICE OF COMMISSION ACTION

Pursuant to 39 CFR 3040.173, the Commission establishes Docket No. MC2022-60 to gather information to determine appropriate classification action and invites comments on whether the Postal Service’s Pilot Program comports with 39 CFR 3035, 39 CFR 3040, 39 CFR 3045, 39 U.S.C. 404, 39 U.S.C. 3632, 39 U.S.C. 3633, and 39 U.S.C. 3641. Comments are due no later than June 30, 2022. The filing can be accessed via the Commission’s website (<https://www.prc.gov>).

The Commission appoints Kenneth E. Richardson to represent the interests of the general public (Public Representative) in this docket.

¹² Docket No. ACR2021, First Response of the United States Postal Service to Commission Requests for Additional Information in the FY 2021 Annual Compliance Determination, April 12, 2022, at 2.

IV. ORDERING PARAGRAPHS

It is ordered:

1. The Commission establishes Docket No. MC2022-60 to consider matters raised by this Notice.
2. Comments are due no later than June 30, 2022.
3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this Notice in the *Federal Register*.

By the Commission.

Erica A. Barker
Secretary