

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–2 and CP2009–3;
Order No. 129]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 2 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a recent Postal request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective November 14, 2008.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 66076 (November 6, 2008).

The Postal Service seeks to add a new product identified as Priority Mail Contract 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On October 24, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 2 to the Competitive Product List. The Postal Service asserts that the Priority Mail Contract 2 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–2.¹

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. CP2009–3. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors’ Decision authorizing the new product which also includes an analysis of the Priority Mail Contract 2;² (2) a redacted

version of the contract; which, among other things, provides that the contract will expire 1 year from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals, unless that date is later than November 10, 2008, in which case the effective date will be deferred until January 1, 2009;³ (3) requested changes in the MCS product list;⁴ (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁵ and (5) certification of compliance with 39 U.S.C. 3633(a).⁶

In the Statement of Supporting Justification, Kim Parks, 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 coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. Request, Attachment D, at 1. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). *See id.* Attachment E.

The Postal Service filed much of the supporting materials, including the Governors’ Decision and the specific Priority Mail Contract 2, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer’s name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2.

In Order No. 122, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁷

II. Comments

Comments were filed by the Public Representative.⁸ No filings were submitted by other interested parties. The Public Representative’s comments

other things, that the contract is not risk free, but concludes that the risks are manageable.

³ Attachment B to the Request; *see* Errata to Request of the United States Postal Service to Add Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

⁷ PRC Order No. 122, Notice and Order Concerning Priority Mail Contract 2 Negotiated Service Agreement, October 31, 2008.

⁸ Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 2 to Competitive Product List, November 5, 2008 (Public Representative Comments).

focus principally on confidentiality and pricing under the contract. Public Representative Comments at 2–3.

The Public Representative states that a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service. The Public Representative concludes that the contract is beneficial to both parties as well as the general public. *Id.* at 2–3.

III. Commission Analysis

The Commission has reviewed the contract and the financial analysis provided under seal that accompanies the agreement as well as the comments filed by the Public Representative.

Statutory requirements. The Commission’s statutory responsibilities in this instance entail assigning Priority Mail Contract 2 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 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 2 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 be 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 or 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 shall consist 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 that 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, the market precludes the Postal Service from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, at 2–3. The Postal Service also contends that it may not decrease quality or output without risking the loss of business to

¹ Request of the United States Postal Service to Add Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 24, 2008 (Request).

² Attachment A to the Request. The analysis that accompanies the Governors’ Decision notes, among

competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. 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.*

No commenter opposes the proposed classification of Priority Mail Contract 2 as competitive. Having considered the statutory requirement and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 2 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service's filing seeks to establish a new domestic Priority Mail product. The contract is predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics.

The Postal Service contends that adding the Priority Mail Contract 2 product will result in processing Priority Mail pieces that are less costly for the Postal Service than the average Priority Mail piece. *See* Request, Attachment A. It believes that its financial analysis shows that these cost savings can be accomplished while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. *Id.*, Attachment E, at 1.

Based on the data submitted and the comments received, the Commission finds that Priority Mail Contract 2 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 the proposed Priority Mail Contract 2 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission when the contract terminates, but no later than the actual termination date. The Commission will then remove the contract from the Mail Classification

Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 2 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.

It is Ordered:

1. The Priority Mail Contract 2 (MC2009–2 and CP2009–3) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the termination date of the contract as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

By the Commission.

Steven W. Williams,
Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail

Single-Piece Letters/Postcards
Bulk Letters/Postcards
Flats
Parcels
Outbound Single-Piece First-Class Mail
International
Inbound Single-Piece First-Class Mail
International
Standard Mail (Regular and Nonprofit)
High Density and Saturation Letters
High Density and Saturation Flats/Parcels
Carrier Route
Letters
Flats
Not Flat-Machinables (NFM)/Parcels
Periodicals
Within County Periodicals
Outside County Periodicals
Package Services
Single-Piece Parcel Post
Inbound Surface Parcel Post (at UPU rates)
Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail

Special Services

Ancillary Services
International Ancillary Services
Address List Services
Caller Service
Change-of-Address Credit Card
Authentication
Confirm
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Negotiated Service Agreements
HSBC North America Holdings Inc.
Negotiated Service Agreement
Bookspan Negotiated Service Agreement
Bank of America Corporation Negotiated Service Agreement
The Bradford Group Negotiated Service Agreement

Market Dominant Product Descriptions

First-Class Mail
[Reserved for Class Description]
Single-Piece Letters/Postcards
[Reserved for Product Description]
Bulk Letters/Postcards
[Reserved for Product Description]
Flats
[Reserved for Product Description]
Parcels
[Reserved for Product Description]
Outbound Single-Piece First-Class Mail
International
[Reserved for Product Description]
Inbound Single-Piece First-Class Mail
International
[Reserved for Product Description]
Standard Mail (Regular and Nonprofit)
[Reserved for Class Description]
High Density and Saturation Letters
[Reserved for Product Description]
High Density and Saturation Flats/Parcels
[Reserved for Product Description]
Carrier Route
[Reserved for Product Description]
Letters
[Reserved for Product Description]
Flats
[Reserved for Product Description]
Not Flat-Machinables (NFM)/Parcels
[Reserved for Product Description]
Periodicals
[Reserved for Class Description]
Within County Periodicals
[Reserved for Product Description]
Outside County Periodicals
[Reserved for Product Description]
Package Services
[Reserved for Class Description]
Single-Piece Parcel Post
[Reserved for Product Description]
Inbound Surface Parcel Post (at UPU rates)
[Reserved for Product Description]
Bound Printed Matter Flats
[Reserved for Product Description]
Bound Printed Matter Parcels
[Reserved for Product Description]
Media Mail/Library Mail
[Reserved for Product Description]
Special Services
[Reserved for Class Description]
Ancillary Services
[Reserved for Product Description]
Address Correction Service
[Reserved for Product Description]
Applications and Mailing Permits

[Reserved for Product Description]	Money Orders	Competitive Product Descriptions
Business Reply Mail	[Reserved for Product Description]	Express Mail
[Reserved for Product Description]	Post Office Box Service	[Reserved for Group Description]
Bulk Parcel Return Service	[Reserved for Product Description]	Express Mail
[Reserved for Product Description]	Negotiated Service Agreements	[Reserved for Product Description]
Certified Mail	[Reserved for Class Description]	Outbound International Expedited Services
[Reserved for Product Description]	HSBC North America Holdings Inc.	[Reserved for Product Description]
Certificate of Mailing	Negotiated Service Agreement	Inbound International Expedited Services
[Reserved for Product Description]	[Reserved for Product Description]	[Reserved for Product Description]
Collect on Delivery	Bookspan Negotiated Service Agreement	Priority
[Reserved for Product Description]	[Reserved for Product Description]	[Reserved for Product Description]
Delivery Confirmation	Bank of America Corporation Negotiated	Priority Mail
[Reserved for Product Description]	Service Agreement	[Reserved for Product Description]
Insurance	The Bradford Group Negotiated Service	Outbound Priority Mail International
[Reserved for Product Description]	Agreement	[Reserved for Product Description]
Merchandise Return Service	Part B—Competitive Products	Inbound Air Parcel Post
[Reserved for Product Description]	Competitive Product List	[Reserved for Product Description]
Parcel Airlift (PAL)	Express Mail	Parcel Select
[Reserved for Product Description]	Express Mail	[Reserved for Group Description]
Registered Mail	Outbound International Expedited Services	Parcel Return Service
[Reserved for Product Description]	Inbound International Expedited Services	[Reserved for Group Description]
Return Receipt	Inbound International Expedited Services 1	International
[Reserved for Product Description]	(CP2008–7)	[Reserved for Group Description]
Return Receipt for Merchandise	Priority Mail	International Priority Airlift (IPA)
[Reserved for Product Description]	Priority Mail	[Reserved for Product Description]
Restricted Delivery	Outbound Priority Mail International	International Surface Airlift (ISAL)
[Reserved for Product Description]	Inbound Air Parcel Post	[Reserved for Product Description]
Shipper-Paid Forwarding	Parcel Select	International Direct Sacks—M-Bags
[Reserved for Product Description]	Parcel Return Service	[Reserved for Product Description]
Signature Confirmation	International	Global Customized Shipping Services
[Reserved for Product Description]	International Priority Airlift (IPA)	[Reserved for Product Description]
Special Handling	International Surface Airlift (ISAL)	International Money Transfer Service
[Reserved for Product Description]	International Direct Sacks—M-Bags	[Reserved for Product Description]
Stamped Envelopes	Global Customized Shipping Services	Inbound Surface Parcel Post (at non-UPU
[Reserved for Product Description]	Inbound Surface Parcel Post (at non-UPU	rates)
Stamped Cards	rates)	International Ancillary Services
[Reserved for Product Description]	International Money Transfer Service	Special Services
Premium Stamped Stationery	International Ancillary Services	Premium Forwarding Service
[Reserved for Product Description]	Special Services	Negotiated Service Agreements
Premium Stamped Cards	Premium Forwarding Service	Domestic
[Reserved for Product Description]	Negotiated Service Agreements	Express Mail Contract 1 (MC2008–5)
International Ancillary Services	Domestic	Express Mail Contract 2 (MC2009–3 and
[Reserved for Product Description]	Express Mail Contract 1 (MC2008–5)	CP2009–4)
International Certificate of Mailing	Express Mail Contract 2 (MC2009–3 and	Parcel Return Service Contract 1 (MC2009–
[Reserved for Product Description]	CP2009–4)	1 and CP2009–2)
International Registered Mail	Parcel Return Service Contract 1 (MC2009–	Priority Mail Contract 1 (MC2008–8 and
[Reserved for Product Description]	1 and CP2009–2)	CP2008–26)
International Return Receipt	Priority Mail Contract 1 (MC2008–8 and	Priority Mail Contract 2 (MC2009–2 and
[Reserved for Product Description]	CP2008–26)	CP2009–3)
International Restricted Delivery	Priority Mail Contract 2 (MC2009–2 and	Outbound International
[Reserved for Product Description]	CP2009–3)	Global Expedited Package Services (GEPS)
Address List Services	Outbound International	Contracts GEPS 1 (CP2008–5, CP2008–
[Reserved for Product Description]	Global Expedited Package Services (GEPS)	11, CP2008–12, and CP2008–13,
Caller Service	Contracts GEPS 1 (CP2008–5, CP2008–	CP2008–18, CP2008–19, CP2008–20,
[Reserved for Product Description]	11, CP2008–12, and CP2008–13,	CP2008–21, CP2008–22, CP2008–23, and
Change-of-Address Credit Card	CP2008–18, CP2008–19, CP2008–20,	CP2008–24)
Authentication	CP2008–21, CP2008–22, CP2008–23, and	Global Plus Contracts
[Reserved for Product Description]	CP2008–24)	Global Plus 1 (CP2008–9 and CP2008–10)
Confirm	Global Plus Contracts	Global Plus 2 (MC2008–7, CP2008–16 and
[Reserved for Product Description]	Global Plus 1 (CP2008–9 and CP2008–10)	CP2008–17)
International Reply Coupon Service	Global Plus 2 (MC2008–7, CP2008–16 and	Inbound Direct Entry Contracts with
[Reserved for Product Description]	CP2008–17)	Foreign Postal Administrations
International Business Reply Mail Service	Inbound Direct Entry Contracts with	(MC2008–6, CP2008–14 and CP2008–15)
[Reserved for Product Description]	Foreign Postal Administrations	

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