

Benefits Form should be filed after the 15th consecutive day that the member is in the coma, for which \$25,000 is payable. If the member remains in a coma for another 15 days, another completed Application for TSGLI Benefits Form should be submitted and another \$25,000 will be paid.

\* \* \* \* \*

(j) *Who will be paid the traumatic injury protection benefit?* The injured member who suffered a scheduled loss will be paid the traumatic injury protection benefit in accordance with title 38 U.S.C. 1980A except under the following circumstances:

(1) If a member is legally incapacitated, the member's guardian or agent or attorney acting under a valid Power of Attorney will be paid the benefit on behalf of the member.

(2) If no guardian, agent, or attorney is authorized to act as the member's legal representative, a military trustee who has been appointed under the authority of 37 U.S.C. 602 will be paid the benefit on behalf of the member. The military trustee will report the receipt of the traumatic injury benefit payment and any disbursements from that payment to the Department of Defense.

\* \* \* \* \*

(Authority: 37 U.S.C. 602, 603; 38 U.S.C. 501(a), 1980A)

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BILLING CODE 8320-01-P

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

[Docket Nos. MC2009-6 and CP2009-7; Order No. 138]

#### Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

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

**DATES:** Effective November 26, 2008.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 73 FR 66077 (November 6, 2008).

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 1 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

### I. Background

On October 27, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail & Priority Mail Contract 1 to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Express Mail & Priority Mail Contract 1 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. MC2009-6.

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. CP2009-7.

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 Express Mail & Priority Mail Contract 1 and certification of the Governors' vote;<sup>2</sup> (2) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;<sup>3</sup> (3) requested changes in the Mail Classification Schedule product list;<sup>4</sup> (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>5</sup> and (5) certification of compliance with 39 U.S.C. 3633(a).<sup>6</sup>

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

<sup>1</sup> Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 1 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 2008 (Request).

<sup>2</sup> Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

<sup>3</sup> Attachment B to the Request.

<sup>4</sup> Attachment C to the Request.

<sup>5</sup> Attachment D to the Request.

<sup>6</sup> Attachment E to the Request.

Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies 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 unredacted Governors' Decision and the unredacted Express Mail & Priority Mail contract, 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 confidential. *Id.* at 2-3.

In Order No. 125, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>7</sup> The Postal Service filed supplemental materials on November 19, 2008.<sup>8</sup>

### II. Comments

Comments were filed by the Public Representative.<sup>9</sup> No filings were submitted by other interested parties. The Public Representative Comments focus principally on the adequacy of cost coverage, appropriate classification of the product, and overall transparency.<sup>10</sup> Public Representative Comments at 2-3.

The Public Representative does not see a substantial risk for this particular contract, but does raise concerns regarding mailing profiles that he says warrant close attention when evaluating this and similar agreements.<sup>11</sup> The Public Representative believes that the proposed Express Mail & Priority Mail Contract 1 product is appropriately classified as competitive. After reviewing the cost savings measures underlying this contract, the Public Representative determines that the

<sup>7</sup> PRC Order No. 125, Notice and Order Concerning Express Mail & Priority Mail Contract 1 Negotiated Service Agreement, October 31, 2008 (Order No. 125).

<sup>8</sup> United States Postal Service Notice of Filing Under Seal of Additional Information Regarding Financial Analysis, November 19, 2008.

<sup>9</sup> Public Representative Comments in Response to Order No. 125, November 10, 2008 (Public Representative Comments).

<sup>10</sup> With respect to transparency, the Public Representative concludes that "[t]he Postal Service should be commended for proceeding diligently toward accommodating transparency concerns." *Id.* at 10.

<sup>11</sup> *Id.* at 3-4. The specific areas of concern identified by the Public Representative are whether mailer-specific projected volumes are sufficiently reliable, whether cost impacts of mailer-specific shape and weight profiles are sufficiently acknowledged, whether seasonal effects are taken into account, and whether package density has been considered. *Id.* at 7-9.

contract is advantageous to the Postal Service and beneficial to the general public. *Id.* at 6. He concludes, *inter alia*, that the contract should generate sufficient revenue to cover the product's attributable costs and contribute to the recovery of total institutional costs assigned to competitive products. *Id.* at 3-4.

### III. 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 Express Mail & Priority Mail Contract 1 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 Express Mail & Priority Mail Contract 1 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 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 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, at 2-3. 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.*

at 2. 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 Express Mail & Priority Mail Contract 1 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & Priority Mail Contract 1 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 Express Mail and 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 Express Mail & Priority Mail Contract 1 product will result in processing Express Mail and Priority Mail pieces that are less costly for the Postal Service than the average respective Express Mail and Priority Mail mailpiece. *See id.* 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.

The Postal Service's supplemental filing of November 19, 2008 modifies data it submitted in support of the Request.<sup>12</sup> The Commission's analysis of the proposed contract is based on the updated information and alternate cost estimates of certain mail functions.<sup>13</sup> The Commission employed the latter to determine whether changed cost inputs would materially affect the contract's

<sup>12</sup> The Postal Service is encouraged to exercise greater care in reviewing supporting materials for accuracy. The Commission's efforts to review negotiated service agreements expeditiously is hampered if the underlying data are incomplete, erroneous, or otherwise not adequately supported.

<sup>13</sup> The Commission's analysis is set forth in Library Reference PRC-CP2009-7-NP-LR-1 which, because it contains confidential information, is being filed under seal.

financial analysis. Based on that analysis, the Commission concludes that the changed inputs do not have a material affect on the underlying financial analysis of the contract. In evaluating costs under a prospective contract compared to the average, the Postal Service should take into account all departures from average cost that may be due to services provided under the contract.

Based on the data submitted and the Commission's analysis shown in Library Reference PRC-CP2009-7-NP-LR-1, the Commission finds that Express Mail & Priority Mail Contract 1 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 Express Mail & Priority Mail Contract 1 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 Express Mail & Priority Mail Contract 1 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.

### IV. Ordering Paragraphs

#### *It is Ordered:*

1. Express Mail & Priority Mail Contract 1 (MC2009-6 and CP2009-7) 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**

**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:

■ 1. The authority citation for part 3020 continues 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

APPENDIX A TO SUBPART A OF PART 3020—MAIL CLASSIFICATION—Continued

Schedule

- [Reserved for Product Description]
- Not Flat-Machinables (NFM)s/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]
  - Business Reply Mail
  - [Reserved for Product Description]
  - Bulk Parcel Return Service
  - [Reserved for Product Description]
  - Certified Mail
  - [Reserved for Product Description]
  - Certificate of Mailing
  - [Reserved for Product Description]
  - Collect on Delivery
  - [Reserved for Product Description]
  - Delivery Confirmation
  - [Reserved for Product Description]
  - Insurance
  - [Reserved for Product Description]
  - Merchandise Return Service
  - [Reserved for Product Description]
  - Parcel Airlift (PAL)
  - [Reserved for Product Description]
  - Registered Mail
  - [Reserved for Product Description]
  - Return Receipt
  - [Reserved for Product Description]
  - Return Receipt for Merchandise
  - [Reserved for Product Description]
  - Restricted Delivery
  - [Reserved for Product Description]
  - Shipper-Paid Forwarding
  - [Reserved for Product Description]
  - Signature Confirmation
  - [Reserved for Product Description]
  - Special Handling
  - [Reserved for Product Description]
  - Stamped Envelopes
  - [Reserved for Product Description]
  - Stamped Cards
  - [Reserved for Product Description]
  - Premium Stamped Stationery
  - [Reserved for Product Description]
  - Premium Stamped Cards
  - [Reserved for Product Description]
  - International Ancillary Services
  - [Reserved for Product Description]
  - International Certificate of Mailing

APPENDIX A TO SUBPART A OF PART 3020—MAIL CLASSIFICATION—Continued

Schedule

- [Reserved for Product Description]
- International Registered Mail
- [Reserved for Product Description]
- International Return Receipt
- [Reserved for Product Description]
- International Restricted Delivery
- [Reserved for Product Description]
- Address List Services
- [Reserved for Product Description]
- Caller Service
- [Reserved for Product Description]
- Change-of-Address Credit Card Authentication
- [Reserved for Product Description]
- Confirm
- [Reserved for Product Description]
- International Reply Coupon Service
- [Reserved for Product Description]
- International Business Reply Mail Service
- [Reserved for Product Description]
- Money Orders
- [Reserved for Product Description]
- Post Office Box Service
- [Reserved for Product Description]

Negotiated Service Agreements

- [Reserved for Class Description]:
- HSBC North America Holdings Inc. Negotiated Service Agreement
- [Reserved for Product Description]
- Bookspan Negotiated Service Agreement
- [Reserved for Product Description]
- Bank of America Corporation Negotiated Service Agreement
- The Bradford Group Negotiated Service Agreement

Part B—Competitive Products.

Competitive Product List:

Express Mail:

- Express Mail
- Outbound International Expedited Services
- Inbound International Expedited Services
- Inbound International Expedited Services 1 (CP2008–7)

Priority Mail:

- Priority Mail
- Outbound Priority Mail International
- Inbound Air Parcel Post

Parcel Select

Parcel Return Service

International:

- International Priority Airlift (IPA)
- International Surface Airlift (ISAL)
- International Direct Sacks-M-Bags
- Global Customized Shipping Services
- Inbound Surface Parcel Post (at non-UPU rates)
- International Money Transfer Service
- International Ancillary Services

Special Services:

- Premium Forwarding Service

Negotiated Service Agreements:

Domestic

- Express Mail Contract 1 (MC2008–5)
- Express Mail Contract 2 (MC2009–3 and CP2009–4)
- Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
- Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
- Priority Mail Contract 1 (MC2008–8 and CP2008–26)
- Priority Mail Contract 2 (MC2009–2 and CP2009–3)
- Priority Mail Contract 3 (MC2009–4 and CP2009–5)
- Priority Mail Contract 4 (MC2009–5 and CP2009–6)

Outbound International

- Global Expedited Package Services (GEPS) Contracts GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)

- Global Plus Contracts Global Plus 1 (CP2008–9 and CP2008–10) Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)

- Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)

Competitive Product Descriptions

- Express Mail
- [Reserved for Group Description]

APPENDIX A TO SUBPART A OF PART 3020—MAIL CLASSIFICATION—Continued

Schedule

- Express Mail
- [Reserved for Product Description]
- Outbound International Expedited Services
- [Reserved for Product Description]
- Inbound International Expedited Services
- [Reserved for Product Description]
- Priority
- [Reserved for Product Description]
- Priority Mail
- [Reserved for Product Description]
- Outbound Priority Mail International
- [Reserved for Product Description]
- Inbound Air Parcel Post
- [Reserved for Product Description]
- Parcel Select
- [Reserved for Group Description]
- Parcel Return Service
- [Reserved for Group Description]
- International
- [Reserved for Group Description]
- International Priority Airlift (IPA)
- [Reserved for Product Description]
- International Surface Airlift (ISAL)
- [Reserved for Product Description]
- International Direct Sacks-M-Bags
- [Reserved for Product Description]
- Global Customized Shipping Services
- [Reserved for Product Description]
- International Money Transfer Service
- [Reserved for Product Description]
- Inbound Surface Parcel Post (at non-UPU rates)
- [Reserved for Product Description]
- International Ancillary Services
- [Reserved for Product Description]
- International Certificate of Mailing
- [Reserved for Product Description]
- International Registered Mail
- [Reserved for Product Description]
- International Return Receipt
- [Reserved for Product Description]
- International Restricted Delivery
- [Reserved for Product Description]
- International Insurance
- [Reserved for Product Description]
- Negotiated Service Agreements
- [Reserved for Group Description]
- Domestic
- [Reserved for Product Description]
- Outbound International
- [Reserved for Group Description]
- Part C—Glossary of Terms and Conditions [Reserved]
- Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E8-28100 Filed 11-25-08; 8:45 am]  
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**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 80**

[EPA-HQ-OAR-2005-0161; FRL-8745-2]

**RIN 2060-A080**

**Regulation of Fuels and Fuel  
Additives: Modifications to Renewable  
Fuel Standard Program Requirements**

**AGENCY:** Environmental Protection  
Agency (EPA).

**ACTION:** Partial withdrawal of direct  
final rule.

**SUMMARY:** Because EPA received  
adverse comment, we are withdrawing  
several provisions of the direct final rule  
to amend the Renewable Fuel Standard  
program requirements, published on  
October 2, 2008.

**DATES:** Effective November 26, 2008,  
EPA withdraws the amendments to 40  
CFR 80.1129(b)(1), 80.1129(b)(4),  
80.1129(b)(8), 80.1131(a)(8), and  
80.1131(b)(4) published at 73 FR 57248  
on October 2, 2008.