

standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard adopts the interim rule published at 73 FR 28707, May 19, 2008, as final without change.

Dated: November 18, 2008.

P. F. Thomas,

Captain, U.S. Coast Guard, Captain of the Port Zone Jacksonville, Florida.

[FR Doc. E8–30387 Filed 12–19–08; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–12 and CP2009–14; Order No. 149]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail and 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 Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective December 22, 2008.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202–789–6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 74213 (December 5, 2008).

I. Background

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

On November 25, 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 2 to the Competitive Product List.¹ The Postal Service asserts that the Express Mail & 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. MC2009–12.

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. CP2009–14.

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 2 and certification of the Governors’ vote;² (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;³ (3) requested changes in the Mail Classification Schedule product

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, November 25, 2008 (Request).

² 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.

³ Attachment B to the Request.

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. 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 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 confidential. *Id.* at 2–3.

In Order No. 143, 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 states that the Postal Service’s filing complies with applicable Commission rules of practice and procedure, and concludes that the Express Mail & Priority Mail Contract 2 agreement comports with the requirements of title 39. Public Representative Comments at 4. He further states that the agreement appears beneficial to the general public. *Id.* at 1.

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

⁷ PRC Order No. 142, Notice and Order Concerning Express Mail & Priority Mail Contract 2 Negotiated Service Agreement, December 2, 2008 (Order No. 143).

⁸ Public Representative Comments in Response to United States Postal Service Request to Add Express Mail & Priority Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, December 10, 2008 (Public Representative Comments).

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 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 Express Mail & 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 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 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, paragraph (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 the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at paragraph (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.* at paragraph (h).

No commenter opposes the proposed classification of Express Mail & Priority Mail Contract 2 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & 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 financial analysis shows that Express Mail & Priority Mail Contract 2 results in cost savings 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. 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 Commission notes that 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. The failure to do so, while having no material effect on the underlying financial analysis of the contract in this instance, hampers the timely review of the Postal Service's financial analysis. *See also* PRC Order No. 138, November 20, 2008, at 6–7.

Based on the data submitted, the Commission finds that Express Mail & 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 Express Mail & 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 Express Mail & 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. Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14) 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 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 (NFMs)/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	Insurance [Reserved for Product Description]	Inbound Air Parcel Post
International Reply Coupon Service	Merchandise Return Service [Reserved for Product Description]	Parcel Select
International Business Reply Mail Service	Parcel Airlift (PAL) [Reserved for Product Description]	Parcel Return Service
Money Orders	Registered Mail [Reserved for Product Description]	International
Post Office Box Service	Return Receipt [Reserved for Product Description]	International Priority Airlift (IPA)
Negotiated Service Agreements	Return Receipt for Merchandise [Reserved for Product Description]	International Surface Airlift (ISAL)
HSBC North America Holdings Inc. Negotiated Service Agreement	Restricted Delivery [Reserved for Product Description]	International Direct Sacks—M-Bags
Bookspan Negotiated Service Agreement	Shipper-Paid Forwarding [Reserved for Product Description]	Global Customized Shipping Services
Bank of America Corporation Negotiated Service Agreement	Signature Confirmation [Reserved for Product Description]	Inbound Surface Parcel Post (at non-UPU rates)
The Bradford Group Negotiated Service Agreement	Special Handling [Reserved for Product Description]	Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
Market Dominant Product Descriptions	Stamped Envelopes [Reserved for Product Description]	International Money Transfer Service
First-Class Mail [Reserved for Class Description]	Stamped Cards [Reserved for Product Description]	International Ancillary Services
Single-Piece Letters/Postcards [Reserved for Product Description]	Premium Stamped Stationery [Reserved for Product Description]	Special Services
Bulk Letters/Postcards [Reserved for Product Description]	Premium Stamped Cards [Reserved for Product Description]	Premium Forwarding Service
Flats [Reserved for Product Description]	International Ancillary Services [Reserved for Product Description]	Negotiated Service Agreements
Parcels [Reserved for Product Description]	International Certificate of Mailing [Reserved for Product Description]	Domestic
Outbound Single-Piece First-Class Mail International [Reserved for Product Description]	International Registered Mail [Reserved for Product Description]	Express Mail Contract 1 (MC2008–5)
Inbound Single-Piece First-Class Mail International [Reserved for Product Description]	International Return Receipt [Reserved for Product Description]	Express Mail Contract 2 (MC2009–3 and CP2009–4)
Standard Mail (Regular and Nonprofit) [Reserved for Class Description]	International Restricted Delivery [Reserved for Product Description]	Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
High Density and Saturation Letters [Reserved for Product Description]	Address List Services [Reserved for Product Description]	Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
High Density and Saturation Flats/Parcels [Reserved for Product Description]	Caller Service [Reserved for Product Description]	Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Carrier Route [Reserved for Product Description]	Change-of-Address Credit Card Authentication [Reserved for Product Description]	Parcel Select & Parcel Return Service Contract 1 (MC2009–11 and CP2009–13)
Letters [Reserved for Product Description]	Confirm [Reserved for Product Description]	Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Flats [Reserved for Product Description]	International Reply Coupon Service [Reserved for Product Description]	Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Not Flat-Machinables (NFM)/Parcels [Reserved for Product Description]	International Business Reply Mail Service [Reserved for Product Description]	Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Periodicals [Reserved for Class Description]	Money Orders [Reserved for Product Description]	Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Within County Periodicals [Reserved for Product Description]	Post Office Box Service [Reserved for Product Description]	Outbound International
Outside County Periodicals [Reserved for Product Description]	Negotiated Service Agreements [Reserved for Class Description]	Global Expedited Package Services (GEPS) Contracts
Package Services [Reserved for Class Description]	HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]	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)
Single-Piece Parcel Post [Reserved for Product Description]	Bookspan Negotiated Service Agreement [Reserved for Product Description]	Global Plus Contracts
Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description]	Bank of America Corporation Negotiated Service Agreement	Global Plus 1 (CP2008–9 and CP2008–10)
Bound Printed Matter Flats [Reserved for Product Description]	The Bradford Group Negotiated Service Agreement	Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Bound Printed Matter Parcels [Reserved for Product Description]	Part B—Competitive Products	Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
Media Mail/Library Mail [Reserved for Product Description]	2000 Competitive Product List	Competitive Product Descriptions
Special Services [Reserved for Class Description]	Express Mail	Express Mail [Reserved for Group Description]
Ancillary Services [Reserved for Product Description]	Express Mail	Express Mail [Reserved for Product Description]
Address Correction Service [Reserved for Product Description]	Outbound International Expedited Services	Outbound International Expedited Services [Reserved for Product Description]
Applications and Mailing Permits [Reserved for Product Description]	Inbound International Expedited Services	Inbound International Expedited Services [Reserved for Product Description]
Business Reply Mail [Reserved for Product Description]	Inbound International Expedited Services 1 (CP2008–7)	Priority [Reserved for Product Description]
Bulk Parcel Return Service [Reserved for Product Description]	Priority Mail	Priority Mail [Reserved for Product Description]
Certified Mail [Reserved for Product Description]	Priority Mail	Outbound Priority Mail International [Reserved for Product Description]
Certificate of Mailing [Reserved for Product Description]	Outbound Priority Mail International	Inbound Air Parcel Post [Reserved for Product Description]
Collect on Delivery [Reserved for Product Description]		Parcel Select [Reserved for Group Description]
Delivery Confirmation [Reserved for Product 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. E8–30420 Filed 12–19–08; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–11 and CP2009–13;
 Order No. 148]

New Domestic Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Parcel Select & Parcel Return Service Contract 1 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 December 22, 2008.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 74212 (December 5, 2008).

I. Background

The Postal Service seeks to add a new product identified as Parcel Select & Parcel Return Service Contract 1 to the Competitive Product List. For the

reasons discussed below, the Commission approves the Request.

On November 25, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Parcel Select & Parcel Return Service Contract 1 to the Competitive Product List.¹ The Postal Service asserts that the Parcel Select & Parcel Return Service 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. MC2009–11.

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. CP2009–13.

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 Parcel Select & Parcel Return Service Contract 1 and certification of the Governors’ vote;² (2) a redacted version of the contract which, among other things, provides that the contract will expire on May 31, 2011, and will become effective 1 day after the Commission issues all regulatory approvals;³ (3) requested changes in the Mail Classification Schedule 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, Daniel J. Barrett, Acting Manager, Product & Business Development, Ground Shipping Services, 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. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies

¹ Request of the United States Postal Service to Add Parcel Select & Parcel Return Service Contract 1 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, November 25, 2008 (Request).

² Attachment A to the Request. The analysis that accompanies the Governors’ Decision notes, among other things, that the agreement remains profitable regardless of the discount level and results in a positive contribution impact of the Postal Service under all conditions.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

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 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. 142, 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 and Newgistics, Inc.⁸ The Public Representative Comments focus principally on the adequacy of cost coverage, appropriate classification of the product, and overall transparency. Public Representative Comments at 1–2. He concludes that the agreement meets the important public interest in adequate cost coverage and believes the agreement is properly classified as a competitive product. *Id.*

The Public Representative also raises an issue with respect to transparency and the method that the Postal Service uses in this case to redact its filings. He notes that the Commission’s rules contemplate text-based pdf files where possible. *Id.* at 5; accord 39 CFR 3001.10. Despite these minor caveats, the Public Representative believes that the Postal Service should be commended for continuing to proceed diligently toward accommodating transparency concerns in a very competitive business environment.

Newgistics’ comments focus on the financial gain to the Postal Service. It believes that the contract must demonstrate that it will provide “new volumes and revenues” to the Postal Service. It wants to ensure that the Postal Service does not take volume from other postal mail service providers. It notes that shifting mail from one Postal Service customer to another does not result in a contribution gain for the Postal Service. Newgistics also contends

⁷ PRC Order No. 142, Notice and Order Concerning Parcel Select Parcel Return Service Contract 1 Negotiated Service Agreement, December 2, 2008 (Order No. 142).

⁸ Public Representative Comments in Response to Order No. 142, December 10, 2008 (Public Representative Comments); Response from Bill Razzouk, Newgistics to Postal Regulatory Commission Notice and Order Concerning Parcel Select & Parcel Return Service Contract 1 Negotiated Service Agreement Order No. 142, December 10, 2008 (Newgistics Comments).