

We received one comment from five individuals who jointly expressed their support for the proposed amendment to § 17.273(e). Based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995, requires that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any given year. This final rule would have no such effect on State, local, and Tribal governments, or on the private sector.

**Paperwork Reduction Act of 1995**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

**Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a “significant regulatory action” requiring review by Office of Management and Budget (OMB) unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal government or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this final rule and has concluded that it is not a significant regulatory action under the Executive Order 12866.

**Regulatory Flexibility Act**

The Secretary of Veterans Affairs hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Individuals eligible for CHAMPVA benefits are widely dispersed geographically and thus services provided to them would not have a significant impact on any small entity. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604.

**Catalog of Federal Domestic Assistance**

This final rule affects the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), for which there is no Catalog of Federal Domestic Assistance program number.

**List of Subjects in 38 CFR Part 17**

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Health facilities, Health professionals, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Travel and transportation expenses, and Veterans.

Approved: June 22, 2009.

**John R. Gingrich,**  
*Chief of Staff, Department of Veterans Affairs.*

■ For the reasons stated above, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

**PART 17—MEDICAL**

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, 1721, and as noted in specific sections.

■ 2. Revise paragraph (e) of § 17.273 to read as follows:

**§ 17.273 Preauthorization.**

\* \* \* \* \*

(e) Durable medical equipment with a purchase or total rental price in excess of \$2,000.

\* \* \* \* \*

**Authority:** 38 U.S.C. 501, 1781.

[FR Doc. E9–15484 Filed 6–30–09; 8:45 am]

**BILLING CODE 8320-01-P**

**POSTAL REGULATORY COMMISSION**

**39 CFR Part 3020**

[Docket Nos. MC2009–25, CP2009–30, CP2009–31, CP2009–32, CP2009–33 and CP2009–34; Order No. 282]

**New Postal Product**

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Final rule.

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

**DATES:** Effective July 1, 2009 and is applicable beginning June 19, 2009.

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

**SUPPLEMENTARY INFORMATION:**

*Regulatory History*, 74 FR 26744 (June 3, 2009)

The Postal Service seeks to add a new product identified as Priority Mail Contract Group to the Competitive Product List, or, in the alternative, add new products identified as Priority Mail Contract 6 through Priority Mail Contract 10 to the Competitive Product List. For the reasons that follow, the Commission adds the contracts identified in Docket Nos. CP2009–30 through CP2009–34 to the Competitive Product List as separate, new products.

**I. The Postal Service’s Request**

On May 19, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add a new product entitled Priority Mail Contract Group to the Competitive Product List.<sup>1</sup> The Postal Service asserts that Priority Mail Contract Group is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2009–25.

The Postal Service contemporaneously filed five contracts

<sup>1</sup> Docket No. MC2009–25, Request of the United States Postal Service to Add Priority Mail Contract Group to Competitive Product List, May 19, 2009 (Request). In the alternative, the Commission construes the Postal Service’s proposal as a request to add Priority Mail Contract 6 through Priority Mail Contract 10 to the Competitive Product List. See Order No. 217, Notice and Order Concerning Priority Mail Contract 6 through 10 Negotiated Service Agreements, May 26, 2009, at 4, n.5 (Order No. 217).

which it identifies as Priority Mail Contract 6, Priority Mail Contract 7, Priority Mail Contract 8, Priority Mail Contract 9, and Priority Mail Contract 10. These contracts have been assigned Docket Nos. CP2009–30 through CP2009–34, respectively.<sup>2</sup> It believes these contracts are related to the proposed new product in Docket No. MC2009–25.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision "authorizing management to negotiate [certain] contracts for Priority Mail service;" (2) requested changes in the Mail Classification Schedule product list and accompanying Mail Classification Schedule language; (3) a redacted version of the Governors' analysis of the Priority Mail Contract Group; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) a certification of compliance with 39 U.S.C. 3633(a).<sup>3</sup> Substantively, the Request seeks to add Priority Mail Contract Group to the Competitive Product List. Request at 1–2.

Redacted versions of five specific Priority Mail contracts are also included with the Request. Three of the contracts are for 3 years, one of the contracts is for 1 year, and the final contract is for 3 months. Depending on the contract, the effective dates are proposed to be either the day the Commission provides all necessary regulatory approvals or the following day.<sup>4</sup> W. Ashley Lyons, Regulatory Reporting and Cost Analysis, Finance Department, certifies that all five contracts comply with 39 U.S.C. 3633(a). See Notices, Attachment B.

In the Statement of Supporting Justification, Mary Prince Anderson, Manager, Sales and Communications, Expedited Shipping, asserts that the services to be provided under the

proposed new product will cover their attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment 2. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of the creation of this product. *Id.*

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail contracts, under seal. In its Request, the Postal Service maintains that the contracts 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. Request at 2; Notices at 2.

## II. Procedural History

In Order No. 217, the Commission gave notice of the above-captioned dockets, offered certain preliminary observations on the Request and Notices, appointed a public representative, requested supplemental information, and provided the public with an opportunity to comment. Significantly, the Commission indicated that, in its view, Governors' Decision 09–6 could be used to satisfy the requirements of 39 CFR 3020.31(b) and 39 U.S.C. 3642 with regard to authorizing future Priority Mail contracts that might or might not be functionally equivalent to existing products. Order No. 217 at 4.

On June 1, 2009, the Postal Service filed the supplemental information requested in Order No. 217.<sup>5</sup> On June 5, 2009, the Public Representative filed comments.<sup>6</sup> On June 8, 2009, the Postal Service and United Parcel Service (UPS) filed comments.<sup>7</sup>

## III. Comments

*UPS comments.* UPS argues that the proposed Priority Mail Contract Group product does not meet the Postal Accountability and Enhancement Act (PAEA) definition of the term "product," and is inconsistent with Order No. 43's finding that every

negotiated service agreement is a separate product unless the agreements are functionally equivalent to one another.<sup>8</sup> It submits that for products to be functionally equivalent, they must have similar cost and market characteristics and be alike in all material respects. UPS Comments at 1–2.

UPS believes that the proposed Priority Mail Contract Group product is not limited to agreements that share the same cost and market characteristics. It believes that the length of time of the contract, whether the mailer or the Postal Service provides packaging as well as entry and preparation requirements, means that these contracts have very different cost characteristics. Moreover, because the shell classification only requires the cost coverage to fall within a specified range, shippers can qualify for contracts under the proposed product without regard to market similarities. *Id.* at 2–3.

UPS also has a concern that the proposed Priority Mail Contract Group would undermine the effectiveness of the PAEA's safeguards—grouping NSAs too broadly not only would diminish the Annual Compliance Report's value as a tool for achieving transparency, but also would undermine substantive ratemaking requirements, such as the requirement that each competitive product cover its attributable costs. It also believes that the effectiveness of pre-implementation review would be diminished due to the shortened timeframe for consideration of functionally equivalent agreements. In support of its position, UPS cites to Commission Order No. 26 in Docket No. RM2007–1.<sup>9</sup> UPS Comments at 3–4.

*Public Representative Comments.* The Public Representative's Comments focus on (1) the breadth of the proposed shell classification in Docket No. MC2009–25; (2) a concern that the Governors may be delegating too much of their authority to management with respect to the proposed shell classification in Docket No. MC2009–25; and (3) a concern about the lack of transparency and accountability with respect to the voting records of the Governors. Public Representative Comments at 2–9. He believes that creating a broad product category seemingly without functional constraint is contrary to the public interest and the intent of the PAEA. *Id.* at 10.

<sup>2</sup> See Docket Nos. CP2009–30 through CP2009–34, Notice of Establishment of Rates and Class Not of General Applicability, May 19, 2009 (collectively cited as Notices).

<sup>3</sup> Attachment 1 to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rates and Classes Not of General Applicability for Priority Mail Contract Group (Governors' Decision No. 09–6). The Governors' Decision includes two attachments. Attachment A shows the requested changes to the Mail Classification Schedule product list. Attachment B provides an analysis of the proposed Priority Mail Contract Group. Attachment 2 provides a statement of supporting justification for this Request. Attachment 3 provides the certification of compliance with 39 U.S.C. 3633(a).

<sup>4</sup> The contracts in Docket Nos. CP2009–30, CP2009–31 and CP2009–34 become effective on the day the Commission issues all necessary regulatory approvals. The contracts in Docket Nos. CP2009–32 and CP2009–33 become effective the day after the Commission issues all necessary regulatory approvals.

<sup>5</sup> Notice of the United States Postal Service of Filing Under Seal of Response to Request for Supplemental Information in Order No. 217, June 1, 2009 (Response).

<sup>6</sup> Public Representative Comments in Response to Order No. 217, June 5, 2009 (Public Representative Comments).

<sup>7</sup> Comments of the United States Postal Service in Response to Order No. 217 (Postal Service Comments), and Comments of United Parcel Service in Response to Commission Order No. 217 (UPS Comments), both filed on June 8, 2009.

<sup>8</sup> Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 (Order No. 43).

<sup>9</sup> Docket No. RM2007–1, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007 (Order No. 26).

The Public Representative offers two recommendations to alleviate these concerns. First, he suggests that the Commission work with the Postal Service to define shell classifications in a "somewhat narrower fashion" so that there is some common element among the included contracts. Second, he recommends that broad shell classifications should be set to expire after a specified period of time. *Id.* at 9–10.

*Postal Service comments.* The Postal Service claims that all five contracts share the cost and market characteristics of large, commercial Priority Mail customers. As such, it believes the agreements are functionally equivalent. The Postal Service references its Notices that identify the differences between the five agreements. For example, it states that proposed Priority Mail Contract 7 differs from Priority Mail Contract 6 only in regards to the negotiated prices, the postage payment method, and the provision of Priority Mail packaging. Postal Service Comments at 2. It characterizes these differences as "minor," and argues that they do not rise to the level of differences in cost or market characteristics that would be expected at the product level. *Id.* at 1–2.

The Postal Service does not believe that the scope of the classification established by the Governors is problematic, noting that it is less broad than Priority Mail service as a whole, which is one product. It contends that while the concept of functional equivalency was originally applied to negotiated service agreements to ensure similarly situated customers would be entitled to similar agreements with the Postal Service, those concerns are reduced significantly in the context of competitive products. *Id.* at 3–4.

As a practical matter, the Postal Service explains that it has encountered difficulties in implementing contracts and maintaining customers in light of various uncertainties, including the lack of a statutory or regulatory timeline for proceedings filed under section 3642. It notes that "even after negotiation, signature, and filing, the implementation date is not known when a section 3642 proceeding is required." *Id.* at 4. On the other hand, it argues that adding Priority Mail Contract Group to the product list will improve the ability of the Postal Service to plan with the customer for a smooth initiation and implementation of the contract terms on a known date. *Id.* at 4–5.

#### IV. Commission Analysis

The Commission has reviewed the Postal Service's filings in Docket Nos.

MC2009–25 and CP2009–30 through CP2009–34, the financial analysis provided under seal that accompanies it, the supplemental information filed by the Postal Service, and the comments filed by the Public Representative, the Postal Service, and UPS.

*Statutory requirements.* The Commission's statutory responsibilities with respect to 39 U.S.C. 3642 in this instance entail (1) determining the appropriate scope of the proposed new product or products, and (2) assigning the proposed contracts to either the Market Dominant Product List or to the Competitive Product List. As part of this responsibility, the Commission also reviews the proposal for compliance with PAEA requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

*Scope of the proposed product.* The Postal Service is seeking to place on the Competitive Product List a product that would encompass all mailer-specific agreements for Priority Mail. The proposed requirements for that negotiated service agreement product entitled "Priority Mail Contract Group" are as follows: (1) The agreement must be for Priority Mail service, and (2) the cost coverage for the particular contract must fall within a specified, broad range. Request, Attachment 1 and Attachment A. The Public Representative and UPS argue that the scope of this proposed new product is too broad, and that classifying all five Priority Mail contracts at issue in this case (and future Priority Mail contracts satisfying the above criteria) as a single product is inappropriate.

39 U.S.C. 102(6) defines the term "product" as "a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied[.]" In Order No. 43, the Commission found, after providing the public with several rounds of notice and comment in a rulemaking proceeding, that each negotiated service agreement would be treated as a separate product except in very limited circumstances. Order No. 43, paras. 1003, 2177. With respect to these limited circumstances, the Commission stated that "it may be appropriate to group functionally equivalent negotiated service agreements as a single product if it can be shown that they have similar cost and market characteristics." *Id.* para. 2177. After consideration of conflicting arguments from several commenters, the Commission found that this method of treating negotiated service agreements as separate products was an appropriate

way to balance the PAEA's competing goals. The Commission noted:

This treatment affords the Postal Service flexibility to enter into any special classification it wishes, but provides the necessary transparency to satisfy relevant business and regulatory needs. Absent the discipline that such accountability imposes, both the Postal Service and the Commission roles under the PAEA may be compromised. For example, the Postal Service may lack agreement-specific details on profitability of the agreement, while the Commission would be unable to assess whether the agreement complied with the statute.

Order No. 26, para. 3079. Allowing negotiated service agreements to be placed into only a few products "forfeits transparency and serves no legitimate business or regulatory need \* \* \* [and] it will not provide for accountability, a bedrock principle underlying the PAEA." *Id.* para. 3070. In particular, as UPS notes, too broadly defining a product would diminish the effectiveness of the Commission's review of the Postal Service's annual compliance report since the Commission's annual compliance determination focuses on compliance at the product level. *See* 39 U.S.C. 3652(a)(1), 3653(b)(1).

Negotiated service agreements may be treated as part of the same product, but only when they have similar cost and market characteristics. Although the Postal Service characterizes the differences between the contracts and contractual partner profiles as "minor," the Commission is not persuaded that the differences are sufficiently minor as to allow treatment as a single product. The proposed "Priority Mail Contract Group" is too encompassing to ensure that the contracts have similar cost and market characteristics. The proposed Priority Mail Contract Group product would treat all Priority Mail contracts as one product so long as the anticipated cost coverage of each contract falls within a given, broad range. As UPS notes, no other qualifications apply.

The proposed draft Mail Classification Schedule language states that:

Each individual contract will specify the applicable rates, any postage payment methods required, whether any volume minimums apply, whether packaging is provided by the Postal Service, the length of the contract and any price adjustment mechanism, and any other customized terms or conditions applicable to the provision of Priority Mail service at the negotiated rates.

Request at Attachment 1, Attachment A. Each of the five characteristics listed have potential cost and/or market implications. For example, as UPS points out, "[a] contract that will be in effect for only the summer of 2009

would not have the same market or cost characteristics as contracts that will be in effect for all seasons of the year.” UPS Comments at 2. Other criteria not identified in the proposed product description language that may have distinct cost and/or market characteristics include shape, weight, and dropshipping.

The proposed catch-all provision allowing future contracts to contain “any other customized terms or conditions” is also problematic. It is so expansive as to be unknowable, but presumably would justify any Priority Mail piece meeting the cost coverage range to fall within the proposed product. This catch-all approach is far too wide-ranging to allow the Commission to conclude that there are similar cost characteristics in the potential contractual partners’ mailing profiles.

Additionally, if the Postal Service is suggesting that all contractual partners that use Priority Mail exhibit similar market characteristics, that contention has no support.<sup>10</sup> The Commission does not view mailings with significantly different costs or mailings sent by mailers with different market characteristics as functionally equivalent, notwithstanding that their cost coverages are within a wide, given range.

For the reasons discussed above, the Postal Service’s proposed Priority Mail Contract Group is too broad to be considered a single product. Below, the Commission addresses the contracts filed in Docket Nos. CP2009–30 through 34 to determine if the agreement should be placed on the product list as a separate product or if several of the agreements can be placed on the product list as one product on the basis of functional equivalency.

**Functional equivalence.** The Postal Service contends that the four contracts are functionally equivalent to the one submitted in Docket No. CP2009–30 and that, accordingly, all should be grouped under the same product. Notices at 1; Postal Service Comments at 2. It appears to be implicitly arguing that the contracts share the same cost and market characteristics as the one submitted in Docket No. CP2009–30. See Postal Service Comments at 1–2. It points out that the differences between the contracts relate to negotiated prices,

<sup>10</sup> The Postal Service correctly points out that Priority Mail (dealing with rates of general applicability) is a broad, distinct product. However, a broad Priority Mail product of general applicability does not raise the same concerns, discussed above and in Order Nos. 26 and 43, as multiple mailer specific contracts “expected” to achieve a cost coverage target.

the postage payment method, the provision of packaging, the term of the contract, and mail entry requirements. *Id.* at 2 (*citing* Notices at 1). It characterizes these differences as “minor.” *Id.* The Commission has reviewed the five contracts and, for the same reasons that it found the Priority Mail Contract Group proposed product to be overbroad, finds that none of these contracts may be appropriately classified within the same product. Accordingly, these contracts will be treated as separate products (Priority Mail Contract 6 through Priority Mail Contract 10).<sup>11</sup>

**Timelines for review under 39 U.S.C. 3642.** The Postal Service implies that the absence of a statutory or regulatory timeline for the Commission’s review under 39 U.S.C. 3642 has contributed to “difficulties in implementing contracts and maintaining customers[.]”<sup>12</sup> The Postal Service correctly notes that proceedings under 39 CFR 3015.5 require at least 15 days’ notice prior to the effective date, while 39 CFR 3020 subpart B proceedings do not have a definite timeframe. However, the Commission has consistently processed 39 CFR 3020 subpart B filings expeditiously. Since the first post-PAEA domestic competitive rate contract was filed, the Commission has issued its final decision in 39 CFR 3020 subpart B proceedings in an average of 21 days. Overall, the Commission’s average review period for competitive contracts in section 3642 proceedings is 27 days. These timeframes undoubtedly could be shortened if the initial filings were fully supported by all relevant information. See, e.g., Docket Nos. MC2009–21 and CP2009–26, Order Concerning Priority Mail Contract 5 Negotiated Service Agreement, March 30, 2009, at 6. (“The electronic files submitted in support of the Request did not include all supporting data. Future requests must provide all electronic files showing calculations in support of the financial models associated with the request. A failure to provide such information may

<sup>11</sup> In contrast, the Commission has approved the grouping of several similar contracts within the same product in the international arena (although there may be distinctions between domestic and international services provided by the Postal Service which need to be taken into account). See, e.g., Docket Nos. CP2008–11, 12, 13, 18–21, 23, 25; CP2009–1, 15, 16 (GEPS 1 Product); Docket Nos. CP2009–10, 11, 29 (Global Direct Product); Docket No. CP2009–10 (Global Plus 1 Product); and Docket No. CP2009–17 (Global Plus 2 Product).

<sup>12</sup> Postal Service Comments at 4. The Postal Service does not contend that the absence of a statutory or regulatory timeline is the primary or even a significant factor in causing difficulties in implementing contracts and maintaining customers; instead it states that its difficulties are due to “various uncertainties.” *Id.*

delay resolution of requests in the future.”)

Taking into account these filings represent new products and that the public is entitled to a reasonable opportunity to comment on these proposals, the Commission’s record demonstrates that it acts quickly on Postal Service requests to add new competitive negotiated service agreement products to the Competitive Product List. Moreover, while the Commission appreciates the Postal Service’s desire to move quickly, it would appear that delay in implementation is often not due to Commission proceedings.

For example, three of the five contracts filed in this case in May 2009 were countersigned by the Postal Service in February of 2009.<sup>13</sup> Additionally, the Governors’ Decision associated with these agreements was issued at the end of April 2009, yet the contracts were not filed with the Commission for approval until 22 days later. Request, Attachment 1.

As has been discussed in other contexts, the Commission and the Governors have different, complementary responsibilities. The Commission does recognize the Board of Governors’ concerns in administering such agreements. As stated in Order No. 217, it is the Commission’s view that Governors’ Decision 09–6 may be used to authorize future Priority Mail agreements that satisfy the broad parameters set out in Governors’ Decision 09–6. Based on the parameters of Governors’ Decision 09–6, the Postal Service may seek to add future non-functionally equivalent Priority Mail contracts to the Competitive Product List by filing new, joint “MC” and “CP” dockets. Governors’ Decision 09–6 would then satisfy the requirements of 39 CFR 3020.31(b) and 39 U.S.C. 3642. In those cases, however, the Postal Service still should file supporting justification as required by 39 CFR 3020.32 to justify the particular contract or group of contracts for that narrower product grouping.

**Product list assignment.** In determining whether to assign Priority Mail Contract 6 through Priority Mail Contract 10 as products to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether:

<sup>13</sup> Docket No. CP2009–30, Notice, Attachment A at 5 (signed by the Postal Service on February 17, 2009); Docket No. CP2009–31, Notice, Attachment A at 5 (signed by the Postal Service on February 25, 2009); and Docket No. CP2009–33, Notice, Attachment A at 5 (signed by the Postal Service on February 4, 2009).

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 particular 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, for these contracts, 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 2, at 2. 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 shippers typically support the addition of their agreements 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 6 through Priority Mail Contract 10 as competitive. Having considered the statutory requirement and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 6, Priority Mail Contract 7, Priority Mail Contract 8, Priority Mail Contract 9, and Priority Mail Contract 10 are appropriately classified as competitive products and should be added to the Competitive Product List.

**Cost considerations.** The Postal Service's filings seek to establish new domestic negotiated service agreement products using Priority Mail. The contracts are predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics. Governors' Decision, Attachment B.

The Postal Service contends that its financial analysis shows that each of these five contracts cover its attributable costs, do not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. *See* Notices, Attachment B.

Based on the data submitted and the comments received, the Commission finds that each of the five proposed Priority Mail contracts at issue in this case should cover its respective 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 five proposed Priority Mail contracts at issue in this case indicates that each comports with the provisions applicable to rates for competitive products.

**Termination dates.** The Postal Service shall promptly notify the Commission when each 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 6 (MC2009–25 and CP2009–30), Priority Mail Contract 7 (MC2009–25 and CP2009–31), Priority Mail Contract 8 (MC2009–25 and CP2009–32), Priority Mail Contract 9 (MC2009–25 and CP2009–33), and Priority Mail Contract 10 (MC2009–25 and CP2009–34) as new products. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of the order.

## V. Ordering Paragraphs

### *It is Ordered:*

1. Priority Mail Contract 6 (MC2009–25 and CP2009–30), Priority Mail Contract 7 (MC2009–25 and CP2009–31), Priority Mail Contract 8 (MC2009–25 and CP2009–32), Priority Mail Contract 9 (MC2009–25 and CP2009–33), and Priority Mail Contract 10 (MC2009–25 and CP2009–34) are added to the Competitive Product List as new products under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the termination date of each contract filed in Docket Nos. CP2009–30, CP2009–31, CP2009–32, CP2009–33, and CP2009–34 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)s/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	[Reserved for Product Description]	Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
The Bradford Group Negotiated Service Agreement	Insurance	Priority Mail
Inbound International	[Reserved for Product Description]	Priority Mail
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Market Dominant Services	Merchandise Return Service	Outbound Priority Mail International
Market Dominant Product Descriptions	[Reserved for Product Description]	Inbound Air Parcel Post
First-Class Mail	Parcel Airlift (PAL)	Royal Mail Group Inbound Air Parcel Post Agreement
[Reserved for Class Description]	[Reserved for Product Description]	Parcel Select
Single-Piece Letters/Postcards	Registered Mail	Parcel Return Service
[Reserved for Product Description]	[Reserved for Product Description]	International
Bulk Letters/Postcards	Return Receipt	International Priority Airlift (IPA)
[Reserved for Product Description]	[Reserved for Product Description]	International Surface Airlift (ISAL)
Flats	Return Receipt for Merchandise	International Direct Sacks—M-Bags
[Reserved for Product Description]	[Reserved for Product Description]	Global Customized Shipping Services
Parcels	Restricted Delivery	Inbound Surface Parcel Post (at non-UPU rates)
[Reserved for Product Description]	[Reserved for Product Description]	Canada Post—United States Postal service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
Outbound Single-Piece First-Class Mail International	Shipper-Paid Forwarding	International Money Transfer Service
[Reserved for Product Description]	[Reserved for Product Description]	International Ancillary Services
Inbound Single-Piece First-Class Mail International	Signature Confirmation	Special Services
[Reserved for Product Description]	[Reserved for Product Description]	Premium Forwarding Service
Standard Mail (Regular and Nonprofit)	Special Handling	Negotiated Service Agreements
[Reserved for Class Description]	[Reserved for Product Description]	Domestic
High Density and Saturation Letters	Stamped Envelopes	Express Mail Contract 1 (MC2008–5)
[Reserved for Product Description]	[Reserved for Product Description]	Express Mail Contract 2 (MC2009–3 and CP2009–4)
High Density and Saturation Flats/Parcels	Stamped Cards	Express Mail Contract 3 (MC2009–15 and CP2009–21)
[Reserved for Product Description]	[Reserved for Product Description]	Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Carrier Route	Premium Stamped Stationery	Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
[Reserved for Product Description]	[Reserved for Product Description]	Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Letters	Premium Stamped Cards	Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
[Reserved for Product Description]	[Reserved for Product Description]	Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Flats	International Ancillary Services	Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
[Reserved for Product Description]	[Reserved for Product Description]	Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Not Flat-Machinables (NFM)s/Parcels	International Certificate of Mailing	Priority Mail Contract 2 (MC2009–2 and CP2009–3)
[Reserved for Product Description]	[Reserved for Product Description]	Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Periodicals	International Registered Mail	Priority Mail Contract 4 (MC2009–5 and CP2009–6)
[Reserved for Class Description]	[Reserved for Product Description]	Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Within County Periodicals	International Return Receipt	Priority Mail Contract 6 (MC2009–25 and CP2009–30)
[Reserved for Product Description]	[Reserved for Product Description]	Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Outside County Periodicals	International Restricted Delivery	Priority Mail Contract 8 (MC2009–25 and CP2009–32)
[Reserved for Product Description]	[Reserved for Product Description]	Priority Mail Contract 9 (MC2009–25 and CP2009–33)
Package Services	Address List Services	Priority Mail Contract 10 (MC2009–25 and CP2009–34)
[Reserved for Class Description]	[Reserved for Product Description]	Outbound International
Single-Piece Parcel Post	Caller Service	Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
[Reserved for Product Description]	[Reserved for Product Description]	Global Expedited Package Services (GEPS) Contracts
Inbound Surface Parcel Post (at UPU rates)	Change-of-Address Credit Card Authentication	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)
[Reserved for Product Description]	[Reserved for Product Description]	Global Plus Contracts
Bound Printed Matter Flats	Confirm	Global Plus 1 (CP2008–9 and CP2008–10)
[Reserved for Product Description]	[Reserved for Product Description]	Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
Bound Printed Matter Parcels	International Reply Coupon Service	
[Reserved for Product Description]	[Reserved for Product Description]	
Media Mail/Library Mail	International Business Reply Mail Service	
[Reserved for Product Description]	[Reserved for Product Description]	
Special Services	Money Orders	
[Reserved for Class Description]	[Reserved for Product Description]	
Ancillary Services	Post Office Box Service	
[Reserved for Product Description]	[Reserved for Product Description]	
Address Correction Service	Negotiated Service Agreements	
[Reserved for Product Description]	[Reserved for Class Description]	
Applications and Mailing Permits	HSBC North America Holdings Inc. Negotiated Service Agreement	
[Reserved for Product Description]	[Reserved for Product Description]	
Business Reply Mail	Bookspan Negotiated Service Agreement	
[Reserved for Product Description]	[Reserved for Product Description]	
Bulk Parcel Return Service	Bank of America Corporation Negotiated Service Agreement	
[Reserved for Product Description]	The Bradford Group Negotiated Service Agreement	
Certified Mail	Part B—Competitive Products	
[Reserved for Product Description]	Competitive Product List	
Certificate of Mailing	Express Mail	
[Reserved for Product Description]	Express Mail	
Collect on Delivery	Outbound International Expedited Services	
[Reserved for Product Description]	Inbound International Expedited Services	
Delivery Confirmation	Inbound International Expedited Services 1 (CP2008–7)	

Inbound International  
 Inbound Direct Entry Contracts with  
 Foreign Postal Administrations  
 (MC2008–6, CP2008–14 and CP2008–15)  
 International Business Reply Service  
 Competitive Contract 1 (MC2009–14 and  
 CP2009–20)  
 Competitive Product Descriptions  
 Express Mail  
 [Reserved for Group Description]  
 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. E9–15469 Filed 6–30–09; 8:45 am]

**BILLING CODE 7710-FW-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

[EPA–R02–RCRA–2009–0346; FRL–8916–7]

### New York: Final Authorization of State Hazardous Waste Management Program Revision

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

**ACTION:** Immediate final rule.

**SUMMARY:** New York State has applied to EPA for final authorization of changes to its hazardous waste program under the Solid Waste Disposal Act, as amended, commonly referred to as Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes, with limited exceptions, satisfy all requirements needed to qualify for final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize New York's changes to its hazardous waste program will take effect as provided below. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule, or the portion of the rule that is the subject of the comments, before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

**DATES:** This final authorization will become effective on August 31, 2009 unless EPA receives adverse written comment by July 31, 2009. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule or those paragraphs or sections of this rule which are the subject of the comments opposing the authorization in the **Federal Register** and inform the public that only the portion of the rule that is not withdrawn will take effect. (See Section E of this rule for further details).

**ADDRESSES:** Submit your comments, identified by EPA–R02–RCRA–2009–0346, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *E-mail:* [infurna.michael@epa.gov](mailto:infurna.michael@epa.gov).

- *Fax:* (212) 637–4437.

- *Mail:* Send written comments to Michael Infurna, Division of

Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007.

- *Hand Delivery or Courier:* Deliver your comments to Michael Infurna, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 22nd Floor, New York, NY 10007. Such deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify the business hours. Special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA–R02–RCRA–2009–0346. EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov>, or e-mail. The Federal <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties, and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects or viruses. (For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>).

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket