

participation in the program, their approved threshold level, and their revised threshold level (when applicable). Mailers wishing to dispute their threshold level will be provided with instructions on the process.

### 3.5 Program Participation

Mail owners may participate in the program with qualifying volume as follows:

a. Commercial First-Class Mail cards, letters and/or flats volume mailed by the participant through the participant's own permit imprint advance account, precanceled stamp permit(s), or postage meter permit(s);

b. Commercial First-Class Mail cards, letters and/or flats volume prepared by a mail service provider, when entered through a permit owned by the participant;

c. Commercial First-Class Mail cards, letters and/or flats pieces mailed through a mail service provider's permit, only when the pieces can be identified as being prepared for the participant and when the applicant's prior mailing activity through the mail service provider's permit can be validated.

### 3.6 Incentive Program Credits

Approved participants demonstrating an increase in commercial First-Class Mail cards, letters and flats volume above their approved threshold level qualify for a credit to their designated permit imprint advance deposit account, Centralized Account Payment System (CAPS) account, or provided through another approved method as follows:

a. The total postage paid for commercial First-Class Mail cards, letters and flats recorded during the program will be identified for each participant.

b. The total postage paid during the program period will be divided by the total number of recorded pieces to generate the average price per piece for the program period.

c. Participants will receive a credit in the amount of 20 percent of the average price per piece applied to the total number of mailpieces, for the incremental volume above their approved threshold level, recorded during the program period.

### 3.7 Mailing Activity Review

Mailing activity by participants will be reviewed in the calendar months preceding and following the end of the program. The qualifying volume recorded for participants may be adjusted in accordance with the following:

a. The participant's previously determined volume trend will be applied to the volume of commercial First-Class Mail cards, letters and flats mailed by the participant within the months of September 2008 and January 2009, to determine the program participant's September 2009 and January 2010 expected volumes.

b. The participant's actual September 2009 and January 2010 volumes will then be compared to their September 2009 and January 2010 expected volumes.

c. Participants failing to meet their September 2009 and/or January 2010 expected volume will have any shortfall in volume deducted from the number of mailpieces eligible for an incentive credit within the program.

d. Participants demonstrating a shortfall in volume to either their September 2009 or January 2010 expected volumes will have that shortfall deducted from the number of mailpieces eligible for an incentive credit within the program regardless of any surplus demonstrated in the expected volume threshold of the other month.

\* \* \* \* \*

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9-21072 Filed 9-1-09; 8:45 am]

BILLING CODE 7710-12-P

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

[Docket Nos. MC2009-37 and CP2009-56; Order No. 278]

#### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adding the Priority Mail Contract 17 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 in the law.

**DATES:** Effective September 2, 2009 and is applicable beginning August 14, 2009.

#### FOR FURTHER INFORMATION CONTACT:

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

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 74 FR 39123 (August 5, 2009).

I. Introduction  
II. Background

III. Comments

IV. Commission Analysis

V. Ordering Paragraphs

### I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 17 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

### II. Background

On July 24, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 17 to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Priority Mail Contract 17 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. MC2009-37.

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. CP2009-56.

In support of its Request, the Postal Service filed the following materials: (1) 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 the day that the Commission issues all regulatory approvals;<sup>2</sup> (2) requested changes in the Mail Classification Schedule product list;<sup>3</sup> (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>4</sup> and (4) certification of compliance with 39 U.S.C. 3633(a).<sup>5</sup> The Postal Service also references Governors' Decision 09-6, filed in Docket No. MC2009-25, as authorization of the new product. Notice at 1.

In the Statement of Supporting Justification, Mary Prince Anderson, Acting 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 C, at 1. W. Ashley

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

<sup>2</sup> Attachment A to the Request.

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

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

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

Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.*, Attachment D.

The Postal Service filed much of the supporting materials, including the supporting data 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, certain terms and conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 261, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>6</sup>

### III. Comments

Comments were filed by the Public Representative.<sup>7</sup> No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing comports with title 39 and the relevant Commission Rules of Practice and Procedure. *Id.* at 1, 3–4. He further states that the agreement appears to be beneficial to the general public, although he does question the utility of the contract's 30-day termination provision. *Id.* at 1, 4, 5–6.

With respect to confidentiality, the Public Representative believes that “[t]o comply with Order No. 247 in Docket[s] MC2009–30 and CP2009–40, the Postal Service should include with its filing a redacted copy of the Governors’ Decision and certification.” *Id.* at 3 (footnote omitted).

### IV. 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 Priority Mail Contract 17 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C.

3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

**Product list assignment.** In determining whether to assign Priority Mail Contract 17 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 C, para. (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 ¶ (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 para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 17 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 17 is appropriately classified as

a competitive product and should be added to the Competitive Product List.

**Cost considerations.** The Postal Service presents a financial analysis showing that Priority Mail Contract 17 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.

Based on the data submitted, the Commission finds that Priority Mail Contract 17 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 proposed Priority Mail Contract 17 indicates that it comports with the provisions applicable to rates for competitive products.

**Other considerations.** The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. The Commission will then remove the product from the Competitive Product List.

Furthermore, the Public Representative's assessment of Order No. 247 is well-taken. Public Representative Comments at 3–4. Subsequently, the Commission issued Order No. 266, which clarified the policy regarding self-contained docket filings. *See* Docket No. CP2009–47, Order Concerning Filing a Functionally Equivalent Global Plus 1 Contract Negotiated Service Agreement, July 31, 2009, at 6–7 (Order No. 266). In recent filings, the Postal Service has adhered to this policy.

In conclusion, the Commission approves Priority Mail Contract 17 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.

### V. Ordering Paragraphs

*It is ordered:*

1. Priority Mail Contract 17 (MC2009–37 and CP2009–56) 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 scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this order.

3. The Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Priority

<sup>6</sup> PRC Order No. 261, Notice and Order Concerning Priority Mail Contract 17 Negotiated Service Agreement, July 29, 2009 (Order No. 261).

<sup>7</sup> Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 17 to Competitive Product List, August 7, 2009 (Public Representative Comments). The Public Representative also filed a Motion of the Public Representative for Late Acceptance of Comments in Response to United States Postal Service Request to Add Priority Mail Contract 17 to Competitive Product List (Motion). That Motion is granted.

Mail Contract 17 to Competitive Product List filed on August 7, 2009, is granted.

4. 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.

Issued: August 14, 2009.

**Judith M. Grady,**

*Acting 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 Schedule 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

Inbound International

Canada Post—United States Postal Service

Contractual Bilateral Agreement for

Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]

Single-Piece Letters/Postcards

[Reserved for Product Description]

Bulk Letters/Postcards

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Parcels

[Reserved for Product Description]

Outbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Inbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]

High Density and Saturation Letters

[Reserved for Product Description]

High Density and Saturation Flats/Parcels

[Reserved for Product Description]

Carrier Route

[Reserved for Product Description]

Letters

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Not Flat-Machinables (NFM)/Parcels

[Reserved for Product Description]

Periodicals

[Reserved for Class Description]

Within County Periodicals

[Reserved for Product Description]

Outside County Periodicals

[Reserved for Product Description]

Package Services

[Reserved for Class Description]

Single-Piece Parcel Post

[Reserved for Product Description]

Inbound Surface Parcel Post (at UPU rates)

[Reserved for Product Description]

Bound Printed Matter Flats

[Reserved for Product Description]

Bound Printed Matter Parcels

[Reserved for Product Description]

Media Mail/Library Mail

[Reserved for Product Description]

Special Services

[Reserved for Class Description]

Ancillary Services

[Reserved for Product Description]

Address Correction Service

[Reserved for Product Description]

Applications and Mailing Permits

[Reserved for Product Description]

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

[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

2000 Competitive Product List

Express Mail

Express Mail

Outbound International Expedited Services

Inbound International Expedited Services

Inbound International Expedited Services 1

(CP2008–7)

Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)	Priority Mail Contract 13 (MC2009–29 and CP2009–39)	International Restricted Delivery [Reserved for Product Description]
Priority Mail	Priority Mail Contract 14 (MC2009–30 and CP2009–40)	International Insurance [Reserved for Product Description]
Priority Mail	Priority Mail Contract 15 (MC2009–35 and CP2009–54)	Negotiated Service Agreements [Reserved for Group Description]
Outbound Priority Mail International	Priority Mail Contract 17 (MC2009–37 and CP2009–56)	Domestic [Reserved for Product Description]
Inbound Air Parcel Post	Outbound International	Outbound International [Reserved for Group Description]
Royal Mail Group Inbound Air Parcel Post Agreement	Direct Entry Parcels Contracts	
Parcel Select	Direct Entry Parcels 1 (MC2009–26 and CP2009–36)	Part C—Glossary of Terms and Conditions [Reserved]
Parcel Return Service	Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)	Part D—Country Price Lists for International Mail [Reserved]
International	Global Expedited Package Services (GEPs) Contracts	[FR Doc. E9–21208 Filed 9–1–09; 8:45 am]
International Priority Airlift (IPA)	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)	<b>BILLING CODE 7710–FW–P</b>
International Surface Airlift (ISAL)	Global Plus Contracts	
International Direct Sacks—M—Bags	Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)	<b>ENVIRONMENTAL PROTECTION AGENCY</b>
Global Customized Shipping Services	Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)	<b>40 CFR Part 180</b>
Inbound Surface Parcel Post (at non-UPU rates)	Inbound International	<b>[EPA–HQ–OPP–2009–0012; FRL–8433–8]</b>
Canada Post—United States Postal service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)	Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)	<b>Methoxyfenozide; Pesticide Tolerances</b>
International Money Transfer Service	International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)	<b>AGENCY:</b> Environmental Protection Agency (EPA).
International Ancillary Services	Competitive Product Descriptions	<b>ACTION:</b> Final rule.
Special Services	Express Mail [Reserved for Group Description]	
Premium Forwarding Service	Express Mail [Reserved for Product Description]	<b>SUMMARY:</b> This regulation establishes tolerances for residues of methoxyfenozide in or on citrus oil and fruit, citrus, group 10 with regional registrations; and corn, pop, grain; corn, pop, stover; pea, dry seed; and pomegranate. The Interregional Research Project No. 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).
Negotiated Service Agreements	Outbound International Expedited Services [Reserved for Product Description]	<b>DATES:</b> This regulation is effective September 2, 2009. Objections and requests for hearings must be received on or before November 2, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the SUPPLEMENTARY INFORMATION).
Domestic	Inbound International Expedited Services [Reserved for Product Description]	<b>ADDRESSES:</b> EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2009–0012. All documents in the docket are listed in the docket index available at <a href="http://www.regulations.gov">http://www.regulations.gov</a> . Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <a href="http://www.regulations.gov">http://www.regulations.gov</a> , or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.),
Express Mail Contract 1 (MC2008–5)	Priority [Reserved for Product Description]	
Express Mail Contract 2 (MC2009–3 and CP2009–4)	Priority Mail [Reserved for Product Description]	
Express Mail Contract 3 (MC2009–15 and CP2009–21)	Outbound Priority Mail International [Reserved for Product Description]	
Express Mail Contract 4 (MC2009–34 and CP2009–45)	Inbound Air Parcel Post [Reserved for Product Description]	
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)	Parcel Select [Reserved for Group Description]	
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)	Parcel Return Service [Reserved for Group Description]	
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)	International [Reserved for Group Description]	
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)	International Priority Airlift (IPA) [Reserved for Product Description]	
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)	International Surface Airlift (ISAL) [Reserved for Product Description]	
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)	International Direct Sacks—M—Bags [Reserved for Product Description]	
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)	Global Customized Shipping Services [Reserved for Product Description]	
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)	International Money Transfer Service [Reserved for Product Description]	
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)	Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]	
Priority Mail Contract 1 (MC2008–8 and CP2008–26)	International Ancillary Services [Reserved for Product Description]	
Priority Mail Contract 2 (MC2009–2 and CP2009–3)	International Certificate of Mailing [Reserved for Product Description]	
Priority Mail Contract 3 (MC2009–4 and CP2009–5)	International Registered Mail [Reserved for Product Description]	
Priority Mail Contract 4 (MC2009–5 and CP2009–6)	International Return Receipt [Reserved for Product Description]	
Priority Mail Contract 5 (MC2009–21 and CP2009–26)		
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)		
Priority Mail Contract 10 (MC2009–25 and CP2009–34)		
Priority Mail Contract 11 (MC2009–27 and CP2009–37)		
Priority Mail Contract 12 (MC2009–28 and CP2009–38)		