

(c) *Definitions.* The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Command Center (COMCEN). The COMCEN may be contacted on VHF-FM Channel 16 or (619) 278-7033.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: August 18, 2009.

D.L. Leblanc,

Commander, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9-21439 Filed 9-4-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-36 and CP2009-55; Order No. 279]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 16 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 8, 2009 and is applicable beginning August 17, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 39122 (August 5, 2009).

- I. Introduction
- II. Background
- III. Comments
- IV. Errata
- V. Commission Analysis
- VI. Ordering Paragraphs

I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 16 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 16 to the Competitive Product List.¹ The Postal Service asserts that the Priority Mail Contract 16 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. MC2009-36.

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. CP2009-55.

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 1 year from the effective date, which is proposed to be the day that the Commission issues all regulatory approvals;² (2) requested changes in the Mail Classification Schedule product list;³ (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁴ and (4) certification of compliance with 39 U.S.C. 3633(a).⁵ 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 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. 260, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁶

III. Comments

Comments were filed by the Public Representative.⁷ No comments were submitted by other interested parties.

The Public Representative states that each “element of 39 U.S.C. 3633(a) appears to be met by Priority Mail Contract 16. *Id.* at 2. On the other hand, he observes “it is not clear that the * * * justification of this contract * * * comports with the requirements of 3632(b)(3).” *Id.* at 3. He submits that the term of the contract is ambiguous, particularly because the provision stating that the contract “shall expire one year from the effective date” is at odds with other clauses for annual adjustments. *Id.* at 3. While recognizing the Governors’ preapproved pricing shell, he also contends that “the contract expiration must be established definitively since it is an essential component of the contract’s classification as ‘a product.’” *Id.*

The Public Representative notes that the Postal Service has duties to provide packaging and labels. *Id.* at 2-3. He also points out that the “contract appears to be silent on issues such as manifesting, electronically or otherwise.” *Id.* at 3. He adds that the Postal Service’s Request at Attachment C provides a statement of support that incorrectly refers to Priority Mail Contract 14, rather than 16.

¹ Request of the United States Postal Service to Add Priority Mail Contract 16 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

² Attachment A to the Request.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ PRC Order No. 260, Notice and Order Concerning Priority Mail Contract 16 Negotiated Service Agreement, July 29, 2009 (Order No. 260).

⁷ Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 16 to Competitive Product List, (Public Representative Comments). The Commission reads these comments as relating to Priority Mail Contract 16, notwithstanding inadvertent reference to Priority Mail Contract 15.

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 4. (Footnote omitted.)

The Public Representative concurs that the Postal Service provides adequate justification for maintaining confidentiality in this case. *Id.* at 4. Yet, he concludes that the Priority Mail Contract 16 agreement does not comport with the requirements of title 39, even though it may otherwise be appropriately classified as competitive. *Id.* at 5. He indicates, however, the contract discrepancies could be remedied. *Id.*

In response to the Public Representative’s Comments, the Postal Service filed an errata to address uncertainties or correct errors of its Request as to adding Priority Mail Contract 16 to the Competitive Product List as a separate product.⁸

IV. Errata

The Errata includes: (a) A revised contract to clarify the term intended by the parties is 3 years, instead of 1 year; (b) a revised second page, along with the other original pages, again filed under seal, and a redacted copy; and (c) a revised page that corrects a typographic error on the Request at Attachment C, so as to change the reference to Priority Mail Contract 16, instead of 14. Errata at 1. The Postal Service further replies that it complies with the Governors’ Decision requiring recitation of any postage payment method required; pointing out that since “a particular postage payment is not required, * * * none is stated.” *Id.* at 2.

V. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, the comments filed by the Public Representative, and the Errata.

Statutory requirements. The Commission’s statutory responsibilities in this instance entail assigning Priority Mail Contract 16 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 16 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether:

[T]he 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 para. (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 16 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 16 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 16

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 16 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 16 indicates that it comports with the provisions applicable to rates for competitive products.

Agreement duration. The Errata reconciles the apparent temporal discrepancy between the one-year term and annual adjustments, indicating that the parties had agreed to a three-year term. Regardless of the number of years, the contract still remains terminable on thirty day’s written notice by either party. *Id.* Notwithstanding that the revised pages of the contract did not appear to be jointly executed, the Commission is satisfied that the parties intend the contract’s duration to be 3 years, not one as originally filed. The Errata also addresses the Public Representative’s concerns related to the subsidiary issues raised that pertain to the contract’s duration.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. 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 16 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.

⁸Errata to Request of the United States Postal Service to Add Priority Mail Contract 16 to Competitive Contract List and Notice of Filing (Under Seal) of Corrected Contract (August 10, 2009) (Errata).

VI. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 16 (MC2009–36 and CP2009–55) 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 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.

Issued: August 17, 2009.

By the Commission.

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	Priority Mail Contract 7 (MC2009–25 and CP2009–31)	[Reserved for Product Description]
The Bradford Group Negotiated Service Agreement	Priority Mail Contract 8 (MC2009–25 and CP2009–32)	International Money Transfer Service [Reserved for Product Description]
Part B—Competitive Products	Priority Mail Contract 9 (MC2009–25 and CP2009–33)	Inbound Surface Parcel Post (at non-UPU rates)
2000 Competitive Product List	Priority Mail Contract 10 (MC2009–25 and CP2009–34)	[Reserved for Product Description]
Express Mail	Priority Mail Contract 11 (MC2009–27 and CP2009–37)	International Ancillary Services [Reserved for Product Description]
Express Mail	Priority Mail Contract 12 (MC2009–28 and CP2009–38)	International Certificate of Mailing [Reserved for Product Description]
Outbound International Expedited Services	Priority Mail Contract 13 (MC2009–29 and CP2009–39)	International Registered Mail [Reserved for Product Description]
Inbound International Expedited Services	Priority Mail Contract 14 (MC2009–30 and CP2009–40)	International Return Receipt [Reserved for Product Description]
Inbound International Expedited Services 1 (CP2008–7)	Priority Mail Contract 15 (MC2009–35 and CP2009–54)	International Restricted Delivery [Reserved for Product Description]
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)	Priority Mail Contract 16 (MC2009–36 and CP2009–55)	International Insurance [Reserved for Product Description]
Priority Mail	Priority Mail Contract 17 (MC2009–37 and CP2009–56)	Negotiated Service Agreements [Reserved for Group Description]
Priority Mail	Outbound International	Domestic [Reserved for Product Description]
Outbound Priority Mail International	Direct Entry Parcels Contracts	Outbound International [Reserved for Group Description]
Inbound Air Parcel Post	Direct Entry Parcels 1 (MC2009–26 and CP2009–36)	Part C—Glossary of Terms and Conditions [Reserved]
Royal Mail Group Inbound Air Parcel Post Agreement	Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)	Part D—Country Price Lists for International Mail [Reserved]
Parcel Select	Global Expedited Package Services (GEPS) Contracts	[FR Doc. E9–21438 Filed 9–4–09; 8:45 am]
Parcel Return Service	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)	BILLING CODE 7710-FW-P
International	Global Plus Contracts	
International Priority Airlift (PA)	Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47)	ENVIRONMENTAL PROTECTION AGENCY
International Surface Airlift (SAL)	Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)	40 CFR Part 35
International Direct Sacks—M—Bags	Inbound International	[EPA-HQ-SFUND-2009-0617; FRL-8953-8]
Global Customized Shipping Services	Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)	RIN 2050-AG53
Inbound Surface Parcel Post (at non-UPU rates)	International Business Reply Service	State and Local Assistance; Technical Correction
Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)	Competitive Contract 1 (MC2009–14 and CP2009–20)	AGENCY: Environmental Protection Agency (EPA).
International Money Transfer Service	Competitive Product Descriptions	ACTION: Final rule; Technical Correction.
International Ancillary Services	Express Mail	SUMMARY: On June 16, 2009, regulations to include State Response Programs and Tribal Response Programs under Section 128(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) as among the Environmental Program Grants eligible for inclusion in a Performance Partnership Grant (PPG) were published. Those final rules included technical errors which this action corrects.
Special Services	[Reserved for Group Description]	DATES: This rule is effective on September 8, 2009.
Premium Forwarding Service	Express Mail	ADDRESSES: The mailing address of the Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response, is U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., MC 5105T, Washington, DC 20460.
Negotiated Service Agreements	Outbound International Expedited Services [Reserved for Product Description]	FOR FURTHER INFORMATION CONTACT: Virginia Fornillo, Office of Solid Waste
Domestic	Inbound International Expedited Services [Reserved for Product Description]	
Express Mail Contract 1 (MC2008–5)	Priority	
Express Mail Contract 2 (MC2009–3 and CP2009–4)	[Reserved for Product Description]	
Express Mail Contract 3 (MC2009–15 and CP2009–21)	Priority Mail	
Express Mail Contract 4 (MC2009–34 and CP2009–45)	[Reserved for Product Description]	
Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)	Outbound Priority Mail International [Reserved for Product Description]	
Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)	Inbound Air Parcel Post [Reserved for Product Description]	
Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)	Parcel Select [Reserved for Group Description]	
Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)	Parcel Return Service [Reserved for Group Description]	
Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)	International [Reserved for Group Description]	
Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)	International Priority Airlift (IPA) [Reserved for Product Description]	
Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)	International Surface Airlift (ISAL) [Reserved for Product Description]	
Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)	International Direct Sacks—M—Bags [Reserved for Product Description]	
Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)	Global Customized Shipping Services	
Priority Mail Contract 1 (MC2008–8 and CP2008–26)		
Priority Mail Contract 2 (MC2009–2 and CP2009–3)		
Priority Mail Contract 3 (MC2009–4 and CP2009–5)		
Priority Mail Contract 4 (MC2009–5 and CP2009–6)		
Priority Mail Contract 5 (MC2009–21 and CP2009–26)		
Priority Mail Contract 6 (MC2009–25 and CP2009–30)		