

ASF or BMC or for mail placed on an ASF, BMC, or SCF pallet under the option in 705.8.10.3.

300 Commercial Mail Flats

301 Physical Standards

3.0 Physical Standards for Automation Flats

[Renumber 3.3 through 3.7 as new 3.4 through 3.8, and add new 3.3 as follows:]

3.3 Flats—Machine Compatibility

Flat-size mailpieces meeting the standards in 1.0 and 3.0, but unable to meet the minimum flexibility standards described in 1.3, are not eligible for automation prices unless the mailpieces demonstrate flats-machine compatibility. Rigid flat-size mailpieces in paper, polywrap or similar packaging that allows for the pieces to be grasped and inducted into USPS flat-sorting equipment may qualify for automation prices when meeting the following standards:

- a. Mailpieces must be enclosed in envelopes or similar packaging capable of withstanding normal processing on USPS flat-sorting equipment.
b. Mailpieces must be approved for automation flats pricing by the USPS. Mailers seeking approval for mailpieces under this standard must contact their local manager, business mail entry for instructions on submitting sample mailpieces to the Pricing and Classification Service Center (PCSC) (see 608.8.0 for address) for analysis and possible testing. Mailpieces having a previous approval from the PCSC for automation flats prices, granted after May 2007, are not required to be resubmitted for a new approval. These and all other approvals granted under 3.3 expire in May 2010.
c. Mailpieces approved for automation flats pricing under this standard must print the endorsement "Automation Flat" directly under or to the left of the postage imprint.

302 Elements on the Face of a Mailpiece

4.0 Barcode Placement

4.6 Barcode in Address Block

When the barcode is included as part of the address block:

[Revise 4.6d by adding a new last sentence as follows:]

d. Window envelopes also must meet the specifications in 601.6.3.

400 Commercial Parcels

460 Bound Printed Matter

465 Mail Preparation

5.0 Preparing Presorted Parcels

5.1 Basic Standards

5.1.1 General Preparation Requirements

All mailings of Presorted Bound Printed Matter (BPM) are subject to these general standards:

[Revise item b as follows:]

b. All pieces in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

470 Media Mail

475 Mail Preparation

5.0 Preparing Media Mail Parcels

[Revise introductory paragraph of 5.1 as follows:]

5.1 Basic Standards

All mailings of Presorted Media Mail are subject these general requirements:

[Revise item b as follows:]

b. All parcels in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

480 Library Mail

485 Mail Preparation

5.0 Preparing Library Mail Parcels

[Revise introductory paragraph of 5.1 as follows:]

5.1 Basic Standards

All mailings of Presorted Library Mail are subject to these general standards:

[Revise item b as follows:]

b. All pieces in a mailing must be within the same processing category.

See 401.1.0 for definitions of machinable and irregular parcels.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9-7570 Filed 4-3-09; 8:45 am]

BILLING CODE 7710-12-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-21 and CP2009-26; Order No. 197]

New Domestic Mail Product

AGENCY: Postal Regulatory Commission. ACTION: Final rule.

SUMMARY: The Commission is adding the Postal Service's Priority Mail Contract 5 negotiated service agreement 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 April 6, 2009 and is applicable beginning March 30, 2009.

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

SUPPLEMENTARY INFORMATION: Regulatory History, 74 FR 12406 (March 24, 2009).

I. Background

The Postal Service seeks to add a new product identified as Priority Mail Contract 5 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On March 13, 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 5 to the Competitive Product List. The Postal Service asserts that the Priority Mail Contract 5 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. MC2009-21.

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. CP2009-26.

1 Request of the United States Postal Service to Add Priority Mail Contract 5 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, March 13, 2009 (Request).

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Priority Mail Contract 5;<sup>2</sup> (2) 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 1 day after the Commission issues all regulatory approvals;<sup>3</sup> (3) requested changes in the Mail Classification Schedule product list;<sup>4</sup> (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>5</sup> and (5) certification of compliance with 39 U.S.C. 3633(a).<sup>6</sup>

In the Statement of Supporting Justification, 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 D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). See *id.*, Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted contract, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2–3.

In Order No. 193, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>7</sup>

## II. Comments

Comments were filed by the Public Representative.<sup>8</sup> No comments were

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

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

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

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

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

<sup>7</sup> PRC Order No. 193, Notice and Order Concerning Priority Mail Contract 5 Negotiated Service Agreement, March 17, 2009 (Order No. 193).

<sup>8</sup> Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 5 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, March 25, 2009 (Public Representative Comments).

submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Priority Mail Contract 5 agreement comports with the requirements of title 39. *Id.* at 4. He further states that the agreement appears to be beneficial to the general public. *Id.* at 1.

The Public Representative believes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. He indicates that several contractual provisions are mutually beneficial to the parties and general public. *Id.*

## III. Commission Analysis

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

**Statutory requirements.** The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 5 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 5 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the

risk of losing volume to private companies. Request, Attachment D, 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 5 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 5 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 5 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 5 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 5 indicates that it comports with the provisions applicable to rates for competitive products.

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 delay resolution of requests in the future.

**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 Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 5 as a new product. The revision to the Competitive Product List is shown below the signature of this order and is effective upon issuance of this order.

#### IV. Ordering Paragraphs

##### *It is Ordered:*

1. Priority Mail Contract 5 (MC2009–21 and CP2009–26) 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.

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)/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  
 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  
 Priority Mail  
 Outbound Priority Mail International  
 Inbound Air Parcel Post

Parcel Select  
 Parcel Return Service  
 International  
 International Priority Airlift (IPA)  
 International Surface Airlift (ISAL)  
 International Direct Sacks—M—Bags  
 Global Customized Shipping Services  
 Inbound Surface Parcel Post (at non-UPU  
 rates)  
 Canada Post—United States Postal Service  
 Contractual Bilateral Agreement for  
 Inbound Competitive Services (MC2009–  
 8 and CP2009–9)  
 International Money Transfer Service  
 International Ancillary Services

Special Services  
 Premium Forwarding Service

Negotiated Service Agreements  
 Domestic  
 Express Mail Contract 1 (MC2008–5)  
 Express Mail Contract 2 (MC2009–3 and  
 CP2009–4)  
 Express Mail Contract 3 (MC2009–15 and  
 CP2009–21)  
 Express Mail & Priority Mail Contract 1  
 (MC2009–6 and CP2009–7)  
 Express Mail & Priority Mail Contract 2  
 (MC2009–12 and CP2009–14)  
 Express Mail & Priority Mail Contract 3  
 (MC2009–13 and CP2009–17)  
 Express Mail & Priority Mail Contract 4  
 (MC2009–17 and CP2009–24)  
 Express Mail & Priority Mail Contract 5  
 (MC2009–18 and CP2009–25)  
 Parcel Return Service Contract 1 (MC2009–  
 1 and CP2009–2)  
 Priority Mail Contract 1 (MC2008–8 and  
 CP2008–26)  
 Priority Mail Contract 2 (MC2009–2 and  
 CP2009–3)  
 Priority Mail Contract 3 (MC2009–4 and  
 CP2009–5)  
 Priority Mail Contract 4 (MC2009–5 and  
 CP2009–6)  
 Priority Mail Contract 5 (MC2009–21 and  
 CP2009–26)

Outbound International  
 Global Direct Contracts (MC2009–9,  
 CP2009–10, and CP2009–11)  
 Global Expedited Package Services (GEPS)  
 Contracts  
 GEPS 1 (CP2008–5, CP2008–11, CP2008–  
 12, and CP2008–13, CP2008–18,  
 CP2008–19, CP2008–20, CP2008–21,  
 CP2008–22, CP2008–23, and CP2008–24)  
 Global Plus Contracts  
 Global Plus 1 (CP2008–9 and CP2008–10)  
 Global Plus 2 (MC2008–7, CP2008–16 and  
 CP2008–17)  
 Inbound 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. E9–7680 Filed 4–3–09; 8:45 am]

BILLING CODE 7710–FW–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

#### 49 CFR Part 232

[Docket No. FRA–2004–17529; Notice No.  
 7]

RIN 2130–AB94

#### Adjustments to the Minimum and Maximum Civil Monetary Penalties for Violations of Federal Railroad Safety Laws or Federal Railroad Administration Safety Regulations; Correction

**AGENCY:** Federal Railroad  
 Administration (FRA), Department of  
 Transportation (DOT).

**ACTION:** Correcting amendment.

**SUMMARY:** On December 30, 2008, FRA  
 published a final rule, pursuant to two  
 statutes, which increased the minimum,  
 ordinary maximum, and aggravated  
 maximum civil monetary penalty it may  
 apply when assessing a civil penalty for  
 a violation of a railroad safety statute or  
 regulation under its authority. (73 FR  
 79698). In preparing that final rule for  
 publication, an error was made: FRA  
 instructed that the numerical amount  
 “\$16,000” be removed from footnote 1  
 of appendix A to 49 CFR part 232 of the  
 final rule and the numerical amount  
 “\$25,000” be added in its place. The  
 instruction should have directed the  
 removal of the numerical amount  
 “\$11,000” and the addition of  
 “\$25,000” in its place.

**DATES:** The correction to the final rule  
 is effective on April 6, 2009.

**FOR FURTHER INFORMATION CONTACT:**  
 Stephen N. Gordon, Trial Attorney,  
 Office of Chief Counsel, FRA, 1200 New  
 Jersey Avenue, SE., Mail Stop 10,  
 Washington, DC 20590 (telephone 202–  
 493–6001), [stephen.n.gordon@dot.gov](mailto:stephen.n.gordon@dot.gov).

**SUPPLEMENTARY INFORMATION:** An error  
 was included in the final rule published  
 on December 30, 2008. (73 FR 79698).  
 FRA failed to account for an October 16,  
 2008 amendment to footnote 1 in  
 appendix A to part 232. The October 16,  
 2008 amendment inadvertently changed  
 the total ordinary maximum civil  
 penalty amount normally assessed per  
 day for two or more violations within a