

# Rules and Regulations

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## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

[Docket Nos. MC2010–15 and CP2010–15; Order No. 378]

#### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adding Priority Mail Contract 24 to the Competitive Product List. This action is consistent with changes in a postal reform law. Republication of the lists of market dominant and competitive products is also consistent with a statutory provision.

**DATES:** Effective February 18, 2010 and is applicable beginning January 4, 2010.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820 or [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 74 FR 31374 (July 1, 2009).

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#### I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 24 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

#### II. Background

Pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 24 to the Competitive

Product List.<sup>1</sup> The Postal Service asserts that Priority Mail Contract 24 is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). The Postal Service states that prices and classification underlying this contract are supported by Governors’ Decision No. 09–06 in Docket No. MC2009–25. *Id.* at 1. The Request has been assigned Docket No. MC2010–15.

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. CP2010–15.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors’ Decision, originally filed in Docket No. MC2009–25, authorizing certain Priority Mail contracts, and proposed Mail Classification Schedule language;<sup>2</sup> (2) a redacted version of the contract, and Certification of Governors’ Vote;<sup>3</sup> (3) a requested change in the Competitive Product List;<sup>4</sup> (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>5</sup> (5) a certification of compliance with 39 U.S.C. 3633(a);<sup>6</sup> and (6) an application for non-public treatment of the materials filed under seal.<sup>7</sup>

In the Statement of Supporting Justification, Susan M. Plonkey, Vice President, Sales, asserts that the service to be provided under the contract will cover its 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 D. Thus, Ms. Plonkey contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Priority Mail Contract 24 is included with the Request. The contract was entered into on May 28, 2009, and will become effective as a Negotiated Service

Agreement January 4, 2010. The contract provides that the Postal Service may not increase rates until after May 27, 2010. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *See id.*, Attachment D.

In its Request, the Postal Service maintains that the supporting financial information, including the analyses that provide prices, terms, conditions, cost data, and financial projections should remain under seal. *Id.*, Attachment F.

In Order No. 358, the Commission gave notice of the two dockets, requested supplemental information, appointed a public representative, and provided the public with an opportunity to comment.<sup>8</sup> On December 18, 2009, the Postal Service provided its response to the Commission’s request for supplemental information.<sup>9</sup> On December 23, 2009, Chairman’s Information Request No. 1 was issued for response by the Postal Service by December 28, 2009.<sup>10</sup> The Postal Service filed its response on December 28, 2009.<sup>11</sup>

#### III. Comments

Comments were filed by the Public Representatives.<sup>12</sup> No comments were submitted by other interested parties. The Public Representatives state that the Postal Service’s filing meets the pertinent provisions of title 39 and the relevant Commission rules. *Id.* at 3. The Public Representatives also believe that the Postal Service has provided appropriate justification for maintaining confidentiality in this case. *Id.* However, the Public Representatives assert that the Postal Service should have filed the instant contract with the Commission when it was executed in May of 2009. *Id.* at 4. As a result, the Public Representatives ask the Commission to “direct the Postal Service to file all existing Priority Mail contracts which have not been previously filed.” *Id.* at 5. The Public Representatives also request

<sup>8</sup> Notice and Order Concerning Priority Mail Contract 24 Negotiated Service Agreement, December 15, 2009 (Order No. 358).

<sup>9</sup> Supplemental Information Provided by the United States Postal Service in Response to Order No. 358, December 18, 2009.

<sup>10</sup> Chairman’s Information Request No. 1, December 23, 2009 (CHIR No. 1).

<sup>11</sup> Responses of the United States Postal Service to Chairman’s Information Request No. 1, December 28, 2009.

<sup>12</sup> Comments of Public Representatives in Response to PRC Order No. 358, December 23, 2009.

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 24 to Competitive Product List and Notice of Filing (Under Seal) of Supporting Data, December 11, 2009 (Request).

<sup>2</sup> Attachment A to the Request, reflecting Governors’ Decision No. 09–06, April 27, 2009.

<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> Attachment F to the Request.

that the Commission encourage the Postal Service to submit all materials referenced in the relevant enabling Governors' Decision. *Id.*

#### IV. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, responses to CHIR No. 1, and the comments filed by the Public Representatives.

**Statutory requirements.** The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 24 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 24 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 consists 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.*, 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.*, para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 24 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 24 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 24 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 24 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 24 indicates that it comports with the provisions applicable to rates for competitive products.

**Other considerations.** The Commission agrees with the Public Representatives that the instant contract could have been filed with the Commission for approval at an earlier date. The Commission also shares the Public Representatives' concern that other, similar contracts might exist. Accordingly, the Commission directs the Postal Service to file, by January 15, 2010, any outstanding Priority Mail contract that may be categorized as a negotiated service agreement because its prices are not subject to change with the general competitive rate increase scheduled to take effect January 4, 2010.

In conclusion, the Commission approves Priority Mail Contract 24 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 24 (MC2010-15 and CP2010-15) is added to the

Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Commission directs the Postal Service to file, by January 15, 2010, any outstanding Priority Mail contract that may be categorized as having competitive rates not of general applicability because its prices are not subject to change with the general competitive rate increase scheduled to take effect January 4, 2010.

3. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date.

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.

**Shoshana M. Grove,**  
*Secretary.*

■ For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

#### PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

**Authority:** 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)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	Bound Printed Matter Parcels	Money Orders
Special Services	[Reserved for Product Description]	[Reserved for Product Description]
Ancillary Services	Media Mail/Library Mail	Post Office Box Service
International Ancillary Services	[Reserved for Product Description]	[Reserved for Product Description]
Address List Services	Special Services	Negotiated Service Agreements
Caller Service	[Reserved for Class Description]	[Reserved for Class Description]
Change-of-Address Credit Card Au-	Ancillary Services	HSBC North America Holdings Inc. Ne-
thentication	[Reserved for Product Description]	gotiated Service Agreement
Confirm	Address Correction Service	[Reserved for Product Description]
International Reply Coupon Service	[Reserved for Product Description]	Bookspan Negotiated Service Agree-
International Business Reply Mail	Applications and Mailing Permits	ment
Service	[Reserved for Product Description]	[Reserved for Product Description]
Money Orders	Business Reply Mail	Bank of America Corporation Nego-
Post Office Box Service	[Reserved for Product Description]	tiated Service Agreement
Negotiated Service Agreements	Bulk Parcel Return Service	The Bradford Group Negotiated Service
HSBC North America Holdings Inc. Ne-	[Reserved for Product Description]	Agreement
gotiated Service Agreement	Certified Mail	Inbound International
Bookspan Negotiated Service Agree-	[Reserved for Product Description]	Canada Post—United States Postal
ment	Certificate of Mailing	Service Contractual Bilateral
Bank of America Corporation Nego-	[Reserved for Product Description]	Agreement for Inbound Market
tiated Service Agreement	Collect on Delivery	Dominant Services (MC2010-12
The Bradford Group Negotiated Service	[Reserved for Product Description]	and R2010-2)
Agreement	Delivery Confirmation	Market Dominant Product Descriptions
Inbound International	[Reserved for Product Description]	First-Class Mail
Canada Post—United States Postal	Insurance	[Reserved for Class Description]
Service Contractual Bilateral	[Reserved for Product Description]	Single-Piece Letters/Postcards
Agreement for Inbound Market	Merchandise Return Service	[Reserved for Product Description]
Dominant Services (MC2010-12	[Reserved for Product Description]	Bulk Letters/Postcards
and R2010-2)	Parcel Airlift (PAL)	[Reserved for Product Description]
Market Dominant Product Descriptions	[Reserved for Product Description]	Flats
First-Class Mail	Registered Mail	[Reserved for Product Description]
[Reserved for Class Description]	[Reserved for Product Description]	Parcels
Single-Piece Letters/Postcards	Return Receipt	[Reserved for Product Description]
[Reserved for Product Description]	[Reserved for Product Description]	Outbound Single-Piece First-Class Mail
Bulk Letters/Postcards	Return Receipt for Merchandise	International
[Reserved for Product Description]	[Reserved for Product Description]	[Reserved for Product Description]
Flats	Restricted Delivery	Inbound Single-Piece First-Class Mail
[Reserved for Product Description]	[Reserved for Product Description]	International
Parcels	Shipper-Paid Forward	[Reserved for Product Description]
[Reserved for Product Description]	[Reserved for Product Description]	Standard Mail (Regular and Nonprofit)
Outbound Single-Piece First-Class Mail	Signature Confirmation	[Reserved for Class Description]
International	[Reserved for Product Description]	High Density and Saturation Letters
[Reserved for Product Description]	Special Handling	[Reserved for Product Description]
Inbound Single-Piece First-Class Mail	[Reserved for Product Description]	High Density and Saturation Flats/Par-
International	Stamped Envelopes	cels
[Reserved for Product Description]	[Reserved for Product Description]	[Reserved for Product Description]
Standard Mail (Regular and Nonprofit)	Stamped Cards	Carrier Route
[Reserved for Class Description]	[Reserved for Product Description]	[Reserved for Product Description]
High Density and Saturation Letters	Premium Stamped Stationery	Letters
[Reserved for Product Description]	[Reserved for Product Description]	[Reserved for Product Description]
High Density and Saturation Flats/Par-	Premium Stamped Cards	Flats
cels	[Reserved for Product Description]	[Reserved for Product Description]
[Reserved for Product Description]	International Ancillary Services	Not Flat-Machinables (NFMs)/Parcels
Carrier Route	[Reserved for Product Description]	[Reserved for Product Description]
[Reserved for Product Description]	International Certificate of Mailing	
Letters	[Reserved for Product Description]	
[Reserved for Product Description]	International Registered Mail	
Flats	[Reserved for Product Description]	
[Reserved for Product Description]	International Return Receipt	
Not Flat-Machinables (NFMs)/Parcels	[Reserved for Product Description]	
[Reserved for Product Description]	International Restricted Delivery	
Periodicals	[Reserved for Product Description]	
[Reserved for Class Description]	Address List Services	
Within County Periodicals	[Reserved for Product Description]	
[Reserved for Product Description]	Caller Service	
Outside County Periodicals	[Reserved for Product Description]	
[Reserved for Product Description]	Change-of-Address Credit Card Au-	
Package Services	thentication	
[Reserved for Class Description]	[Reserved for Product Description]	
Single-Piece Parcel Post	Confirm	
[Reserved for Product Description]	[Reserved for Product Description]	
Inbound Surface Parcel Post (at UPU	International Reply Coupon Service	
rates)	[Reserved for Product Description]	
[Reserved for Product Description]	International Business Reply Mail	
Bound Printed Matter Flats	Service	
[Reserved for Product Description]	[Reserved for Product Description]	

Express Mail & Priority Mail Contract 1 (MC2009-6 and CP2009-7)	Priority Mail Contract 23 (MC2010-9 and CP2010-9)	[Reserved for Product Description]
Express Mail & Priority Mail Contract 2 (MC2009-12 and CP2009-14)	Priority Mail Contract 24 (MC2010-15 and CP2010-15)	International Money Transfer Service
Express Mail & Priority Mail Contract 3 (MC2009-13 and CP2009-17)	Outbound International	[Reserved for Product Description]
Express Mail & Priority Mail Contract 4 (MC2009-17 and CP2009-24)	Direct Entry Parcels Contracts	Inbound Surface Parcel Post (at non-UPU rates)
Express Mail & Priority Mail Contract 5 (MC2009-18 and CP2009-25)	Direct Entry Parcels 1 (MC2009-26 and CP2009-36)	[Reserved for Product Description]
Express Mail & Priority Mail Contract 6 (MC2009-31 and CP2009-42)	Global Direct Contracts (MC2009-9, CP2009-10, and CP2009-11)	International Ancillary Services
Express Mail & Priority Mail Contract 7 (MC2009-32 and CP2009-43)	Global Expedited Package Services (GEPS) Contracts	[Reserved for Product Description]
Express Mail & Priority Mail Contract 8 (MC2009-33 and CP2009-44)	GEPS 1 (CP2008-5, CP2008-11, CP2008-12, CP2008-13, CP2008-18, CP2008-19, CP2008-20, CP2008-21, CP2008-22, CP2008-23, and CP2008-24)	International Certificate of Mailing
Parcel Select & Parcel Return Service Contract 1 (MC2009-11 and CP2009-13)	Global Expedited Package Services 2 (CP2009-50)	[Reserved for Product Description]
Parcel Select & Parcel Return Service Contract 2 (MC2009-40 and CP2009-61)	Global Plus Contracts	International Registered Mail
Parcel Return Service Contract 1 (MC2009-1 and CP2009-2)	Global Plus 1 (CP2008-8, CP2008-46 and CP2009-47)	[Reserved for Product Description]
Priority Mail Contract 1 (MC2008-8 and CP2008-26)	Global Plus 2 (MC2008-7, CP2008-48 and CP2008-49)	International Return Receipt
Priority Mail Contract 2 (MC2009-2 and CP2009-3)	Inbound International	[Reserved for Product Description]
Priority Mail Contract 3 (MC2009-4 and CP2009-5)	Inbound Direct Entry Contracts with Foreign Postal Administrations	International Restricted Delivery
Priority Mail Contract 4 (MC2009-5 and CP2009-6)	Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6, CP2008-14 and MC2008-15)	[Reserved for Product Description]
Priority Mail Contract 5 (MC2009-21 and CP2009-26)	Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008-6 and CP2009-62)	International Insurance
Priority Mail Contract 6 (MC2009-25 and CP2009-30)	International Business Reply Service Competitive Contract 1 (MC2009-14 and CP2009-20)	[Reserved for Product Description]
Priority Mail Contract 7 (MC2009-25 and CP2009-31)	Competitive Product Descriptions	Negotiated Service Agreements
Priority Mail Contract 8 (MC2009-25 and CP2009-32)	Express Mail	[Reserved for Group Description]
Priority Mail Contract 9 (MC2009-25 and CP2009-33)	[Reserved for Group Description]	Domestic
Priority Mail Contract 10 (MC2009-25 and CP2009-34)	Express Mail	[Reserved for Product Description]
Priority Mail Contract 11 (MC2009-27 and CP2009-37)	[Reserved for Product Description]	Outbound International
Priority Mail Contract 12 (MC2009-28 and CP2009-38)	Outbound International Expedited Services	[Reserved for Group Description]
Priority Mail Contract 13 (MC2009-29 and CP2009-39)	[Reserved for Product Description]	Part C—Glossary of Terms and Conditions [Reserved]
Priority Mail Contract 14 (MC2009-30 and CP2009-40)	Inbound International Expedited Services	Part D—Country Price Lists for International Mail [Reserved]
Priority Mail Contract 15 (MC2009-35 and CP2009-54)	[Reserved for Product Description]	
Priority Mail Contract 16 (MC2009-36 and CP2009-55)	Priority	
Priority Mail Contract 17 (MC2009-37 and CP2009-56)	Priority Mail	
Priority Mail Contract 18 (MC2009-42 and CP2009-63)	[Reserved for Product Description]	
Priority Mail Contract 19 (MC2010-1 and CP2010-1)	Outbound Priority Mail International	
Priority Mail Contract 20 (MC2010-2 and CP2010-2)	[Reserved for Product Description]	
Priority Mail Contract 21 (MC2010-3 and CP2010-3)	Inbound Air Parcel Post	
Priority Mail Contract 22 (MC2010-4 and CP2010-4)	[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	

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 665

[Docket No. 090218199-91223-02]

RIN 0648-AX38

#### Fisheries in the Western Pacific; Pelagic Fisheries; Vessel Identification Requirements; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects the effective date of final regulations published in the **Federal Register** on January 21, 2010, from February 22, 2010, to April 21, 2010. The rule revises identification requirements for U.S. vessels that fish for pelagic management unit species in the western and central Pacific Ocean. Each vessel is required to display its International Telecommunication Union Radio Call Sign (IRCS) or, if an IRCS has not been assigned, its official number preceded by the characters "USA-". The rule makes Federal vessel identification requirements consistent with international requirements.

**DATES:** The effective date of the final regulations published in the **Federal**