

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric utilities, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

■ In consideration of the foregoing, the Commission amends Part 385, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 1. The authority citation for Part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825v, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352, 16441, 16451–16463; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 2. Amend § 385.214 by adding new paragraph (a)(4) to read as follows:

§ 385.214 Intervention (Rule 214).

(a) * * *

(4) No person, including entities listed in paragraphs (a)(1) and (a)(2) of this section, may intervene as a matter of right in a proceeding arising from an investigation pursuant to Part 1b of this chapter.

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■ 3. Amend § 385.2201 by revising paragraph (c)(1) to read as follows:

§ 385.2201 Rules governing off-the-record communications (Rule 2201).

* * * * *

(c) * * *

(1) Contested on-the-record proceeding means

(i) Except as provided in paragraph (c)(1)(ii) of this section, any proceeding before the Commission to which there is a right to intervene and in which an intervenor disputes any material issue, any proceeding initiated pursuant to rule 206 by the filing of a complaint with the Commission, any proceeding initiated by the Commission on its own motion or in response to a filing, or any proceeding arising from an investigation under part 1b of this chapter beginning from the time the Commission initiates a proceeding governed by part 385 of this chapter.

(ii) The term does not include notice-and-comment rulemakings under 5 U.S.C. 553, investigations under part 1b of this chapter, proceedings not having a party or parties, or any proceeding in which no party disputes any material issue.

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■ 4. Amend § 385.2202 by revising it to read as follows:

§ 385.2202 Separation of functions (Rule 2202).

In any proceeding in which a Commission adjudication is made after hearing, or in any proceeding arising from an investigation under part 1b of this chapter beginning from the time the Commission initiates a proceeding governed by part 385 of this chapter, no officer, employee, or agent assigned to work upon the proceeding or to assist in the trial thereof, in that or any factually related proceeding, shall participate or advise as to the findings, conclusion or decision, except as a witness or counsel in public proceedings.

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POSTAL REGULATORY COMMISSION**39 CFR Part 3020**

[Docket Nos. MC2008–8 and CP2008–26]

Administrative Practice and Procedure; Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding a new product identified as Priority Mail Contract 1 Negotiated Service Agreement to the Mail Classification Schedule Competitive Product List, pursuant to a Postal Service request. The request incorporates notice of the Postal Service's execution of a related contract. The Commission is also republishing the lists of market dominant and competitive products. The Commission's actions are consistent with changes in a recent law governing postal operations.

DATES: Effective October 22, 2008.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202–789–6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:**I. Background**

On September 23, 2008, 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 1 to the competitive product list. The Postal Service asserts that Priority Mail Contract 1 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. MC2008–8.¹

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 is assigned Docket No. CP2008–26. The Postal Service represents that the contract fits within the proposed Mail Classification Schedule (MCS) language.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision, which also includes an analysis of the Priority Mail Contract 1;² (2) a redacted version of the contract; which, among other things, provides that the contract will expire 2 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;³ (3) requested changes in the MCS product list;⁴ (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁵ and (5) certification of compliance with 39 U.S.C. 3633(a).⁶

In the Statement of Supporting Justification, Kim Parks, 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. Attachment D at 1. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, that the contract complies with 39 U.S.C. 3633(a). Attachment E.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Priority Mail Contract 1, 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 under seal. Request at 2.

In Order No. 111, the Commission gave notice of the two dockets,

¹ Request of the United States Postal Service to Add Priority Mail Contract to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, September 23, 2008 (Request).

² 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.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

appointed a public representative, and provided the public with an opportunity to comment.

II. Comments

Comments were filed by the Public Representative.⁷ No filings were submitted by other interested parties. The Public Representative's comments focus on several aspects of the negotiated Priority Mail Contract 1: Adequate cost coverage for the product, identification of the source and basis for projected volume figures; and use of reliable adjustment factors. Public Representative Comments at 3–4. In addition, the Public Representative comments on the public interest in ensuring that the proposed competitive negotiated service agreements have been considered by the Governors and that such agreements provide increased options for consumers. *Id.* at 4–5.

Based on a review of materials filed under seal, the Public Representative concludes that the contract comports with 39 U.S.C. 3633(a). *Id.* at 4. The Public Representative comments on the projected contract volumes recommending that in future filings the Postal Service should provide in general terms the nature and source of the volume projections for evaluation and review by the Commission. *Id.* at 5–6. Finally, the Public Representative comments that the contract's economic adjustment factors appear to be reasonable and provide adequate revenue protection for the Postal Service. *Id.* at 6.

III. Commission Analysis

The Commission has reviewed the contract and the financial analysis provided under seal that accompanies the agreement as well as the comments by the Public Representative.

The Postal Service's filing is distinguishable from previously filed negotiated service agreements. It seeks to establish a new domestic Priority Mail product, but not as a shell classification. Rather, the contract is predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics.

The Commission's review of the supporting data uncovered certain inconsistencies which, on further inspection, do not substantially alter the financial results, but which nonetheless merit comment. Some of the underlying cost figures were developed from the Postal Service's FY2007 Annual Report

to the Commission instead of from the Commission's FY2007 Annual Compliance Determination. The latter, representing the latest available information, is to be used in future filings.⁸ With respect to volume mix, the Postal Service relies on two different sources of information, namely, an existing special study and data reported by Origin Destination Information System (ODIS). While the use of these two sources of data does not cause the financial results to vary significantly (compared to using only one source), any future similar contracts should employ a single source to derive volume distributions, or alternatively, provide adequate justification for using more than one source.

Based on the data submitted, the Commission finds that the Priority Mail Contract 1 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 the proposed Priority Mail Contract 1 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall notify the Commission of the effective date of the instant contract. In addition, the Postal Service shall promptly notify the Commission when the contract terminates no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 1 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.

It Is Ordered:

1. Priority Mail Contract 1 (MC2008–8 and CP2008–26) is added to the competitive product list as a new product under Negotiated Service Agreement, Domestic.

2. The Postal Service shall notify the Commission of the effective date and the termination date of the contract 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.

Issued October 15, 2008.

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 to read as follows:

Appendix A to Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products
1000 Market Dominant Product List
First-Class Mail

Single-Piece Letters/Postcards

Bulk Letters/Postcards

Flats

Parcels

Outbound Single-Piece First-Class Mail

International

Inbound Single-Piece First-Class Mail

International

Standard Mail (Regular and Nonprofit)

High Density and Saturation Letters

High Density and Saturation Flats/Parcels

Carrier Route

Letters

Flats

Not Flat-Machinables (NFM)s/Parcels

Periodicals

Within County Periodicals

Outside County Periodicals

Package Services

Single-Piece Parcel Post

Inbound Surface Parcel Post (at UPU rates)

Bound Printed Matter Flats

Bound Printed Matter Parcels

Media Mail/Library Mail

Special Services

Ancillary Services

International Ancillary Services

Address List Services

Caller Service

Change-of-Address Credit Card

Authentication

Confirm

International Reply Coupon Service

International Business Reply Mail Service

Money Orders

Post Office Box Service

Negotiated Service Agreements

HSBC North America Holdings Inc.

Negotiated Service Agreement

Bookspan Negotiated Service Agreement

Bank of America Corporation Negotiated

Service Agreement

The Bradford Group Negotiated Service

Agreement

Market Dominant Product Descriptions

First-Class Mail [Reserved for Class

Description]

Single-Piece Letters/Postcards [Reserved for Product Description]

⁷ Public Representative Comments in Response to Order No. 111, October 8, 2008 (Public Representative Comments).

⁸ Modifications, if any, to such data to reflect changed circumstances would need to be fully supported.

Bulk Letters/Postcards [Reserved for Product Description]	Special Handling [Reserved for Product Description]	Outbound International
Flats [Reserved for Product Description]	Stamped Envelopes [Reserved for Product Description]	Global Expedited Package Services (GEPS) Contracts
Parcels [Reserved for Product Description]	Stamped Cards [Reserved for Product Description]	GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, CP2008–24, and CP2008–25)
Outbound Single-Piece First-Class Mail International [Reserved for Product Description]	Premium Stamped Stationery [Reserved for Product Description]	Global Plus Contracts
Inbound Single-Piece First-Class Mail International [Reserved for Product Description]	Premium Stamped Cards [Reserved for Product Description]	Global Plus 1 (CP2008–9 and CP2008–10)
Standard Mail (Regular and Nonprofit) [Reserved for Class Description]	International Ancillary Services [Reserved for Product Description]	Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
High Density and Saturation Letters [Reserved for Product Description]	International Certificate of Mailing [Reserved for Product Description]	Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
High Density and Saturation Flats/Parcels [Reserved for Product Description]	International Registered Mail [Reserved for Product Description]	Competitive Product Descriptions
Carrier Route [Reserved for Product Description]	International Return Receipt [Reserved for Product Description]	Express Mail [Reserved for Group Description]
Letters [Reserved for Product Description]	International Restricted Delivery [Reserved for Product Description]	Express Mail [Reserved for Product Description]
Flats [Reserved for Product Description]	Address List Services [Reserved for Product Description]	Outbound International Expedited Services [Reserved for Product Description]
Not Flat-Machinables (NFM)s/Parcels [Reserved for Product Description]	Caller Service [Reserved for Product Description]	Inbound International Expedited Services [Reserved for Product Description]
Periodicals [Reserved for Class Description]	Change-of-Address Credit Card Authentication [Reserved for Product Description]	Priority [Reserved for Product Description]
Within County Periodicals [Reserved for Product Description]	Confirm [Reserved for Product Description]	Priority Mail [Reserved for Product Description]
Outside County Periodicals [Reserved for Product Description]	International Reply Coupon Service [Reserved for Product Description]	Outbound Priority Mail International [Reserved for Product Description]
Package Services [Reserved for Class Description]	International Business Reply Mail Service [Reserved for Product Description]	Inbound Air Parcel Post [Reserved for Product Description]
Single-Piece Parcel Post [Reserved for Product Description]	Money Orders [Reserved for Product Description]	Parcel Select [Reserved for Group Description]
Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description]	Post Office Box Service [Reserved for Product Description]	Parcel Return Service [Reserved for Group Description]
Bound Printed Matter Flats [Reserved for Product Description]	Negotiated Service Agreements [Reserved for Class Description]	International [Reserved for Group Description]
Bound Printed Matter Parcels [Reserved for Product Description]	HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]	International Priority Airlift (IPA) [Reserved for Product Description]
Media Mail/Library Mail [Reserved for Product Description]	Bookspan Negotiated Service Agreement [Reserved for Product Description]	International Surface Airlift (ISAL) [Reserved for Product Description]
Special Services [Reserved for Class Description]	Bank of America Corporation Negotiated Service Agreement	International Direct Sacks—M-Bags [Reserved for Product Description]
Ancillary Services [Reserved for Product Description]	The Bradford Group Negotiated Service Agreement	Global Customized Shipping Services [Reserved for Product Description]
Address Correction Service [Reserved for Product Description]	Part B—Competitive Products	International Money Transfer Service [Reserved for Product Description]
Applications and Mailing Permits [Reserved for Product Description]	Competitive Product List	Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
Business Reply Mail [Reserved for Product Description]	Express Mail	International Ancillary Services [Reserved for Product Description]
Bulk Parcel Return Service [Reserved for Product Description]	Express Mail	International Certificate of Mailing [Reserved for Product Description]
Certified Mail [Reserved for Product Description]	Outbound International Expedited Services	International Registered Mail [Reserved for Product Description]
Certificate of Mailing [Reserved for Product Description]	Inbound International Expedited Services	International Return Receipt [Reserved for Product Description]
Collect on Delivery [Reserved for Product Description]	Inbound International Expedited Services 1 (CP2008–7)	International Restricted Delivery [Reserved for Product Description]
Delivery Confirmation [Reserved for Product Description]	Priority Mail	International Insurance [Reserved for Product Description]
Insurance [Reserved for Product Description]	Priority Mail	Negotiated Service Agreements [Reserved for Group Description]
Merchandise Return Service [Reserved for Product Description]	Outbound Priority Mail International	Domestic [Reserved for Product Description]
Parcel Airlift (PAL) [Reserved for Product Description]	Inbound Air Parcel Post	Outbound International [Reserved for Group Description]
Registered Mail [Reserved for Product Description]	Parcel Select	Part C—Glossary of Terms and Conditions [Reserved]
Return Receipt [Reserved for Product Description]	Parcel Return Service	Part D—Country Price Lists for International Mail [Reserved]
Return Receipt for Merchandise [Reserved for Product Description]	International	
Restricted Delivery [Reserved for Product Description]	International Priority Airlift (IPA)	
Shipper-Paid Forwarding [Reserved for Product Description]	International Surface Airlift (ISAL)	
Signature Confirmation [Reserved for Product Description]	International Direct Sacks—M-Bags	
	Global Customized Shipping Services	
	Inbound Surface Parcel Post (at non-UPU rates)	
	International Money Transfer Service	
	International Ancillary Services	
	Special Services	
	Premium Forwarding Service	
	Negotiated Service Agreements	
	Domestic	
	Express Mail Contract 1 (MC2008–5)	
	Priority Mail Contract 1 (MC2008–8 and CP2008–26)	

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