

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–33 and CP2009–44;
Order No. 257]

39 CFR Part 3020**Express Mail & Priority Mail Contract 8**

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail & Priority Mail Contract 8 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 under the law.

DATES: Effective August 12, 2009 and is applicable beginning July 27, 2009.

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

SUPPLEMENTARY HISTORY: *Regulatory history*, 74 FR 34373, Jul. 15, 2009.

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I. Introduction

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 8 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On July 2, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30, *et seq.*, to add Express Mail & Priority Mail Contract 8 to the Competitive Product List.¹ On July 6, 2009, the Postal Service filed a revised version of its filing which includes attachments inadvertently omitted from the July 2, 2009 request.² The Postal Service asserts that the Express Mail & Priority Mail Contract 8 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 8 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 2, 2009.

² Errata to Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 8 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 6, 2009 (Request).

1. The Request has been assigned Docket No. MC2009–33.

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. *Id.* The contract has been assigned Docket No. CP2009–44.

On July 8, 2009, the Postal Service filed under seal revised versions of the financial analysis workbooks originally filed under seal on July 2, 2009.³

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 Express Mail & Priority Mail Contract 8 and certification of the Governors’ vote;⁴ (2) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;⁵ (3) requested changes in the Mail classification Schedule product list;⁶ (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁷ and (5) certification of compliance with 39 U.S.C. 3633(a).⁸

In the Statement of Supporting Justification, Mary Prince Anderson, 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 institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. *Id.*, Attachment D. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* 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 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

³ *See* Notice of the United States Postal Service of Filing Under Seal of Revised Financial Analysis Workbooks for Express Mail & Priority Mail Contract 8, July 8, 2009 (Revised Workbooks).

⁴ 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.

⁵ Attachment B to the Request.

⁶ Attachment C to the Request.

⁷ Attachment D to the Request.

⁸ Attachment E to the Request.

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. 241, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁹

III. Information Request

On July 14, 2009, the Chairman issued an information request seeking responses to six questions.¹⁰ The information request was filed under seal. *Id.* On July 20, 2009, the Postal Service filed its responses to CHIR No. 1.¹¹

IV. Comments

Comments were filed by the Public Representative.¹² No filings were submitted by other interested parties. The Public Representative states that the Postal Service’s filing complies with applicable Commission rules of practice and concludes that the Express Mail & Priority Mail Contract 8 agreements comports with the requirements of title 39. *Id.* at 3. He further states that the agreement appears beneficial to the general public. *Id.* at 1.

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

V. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the Revised Workbooks, the Response to CHIR No. 1, and the comments filed by the Public Representative.

Statutory requirements. The Commission’s statutory responsibilities in this instance entail assigning Express Mail & Priority Mail Contract 8 to either

⁹ PRC Order No. 241, Notice and Order Concerning Express Mail & Priority Mail Contract 8 Negotiated Service Agreement, July 7, 2009 (Order No. 241).

¹⁰ Chairman’s Information Request No. 1 and Notice of Filing of Questions under Seal, July 14, 2009 (CHIR No. 1).

¹¹ *See* Notice of the United States Postal Service of Filing Response to Chairman’s Information Request No. 1 Under Seal, July 20, 2009 (Response to CHIR No. 1).

¹² Public Representative Comments in Response to United States Postal Service Request to Add Express Mail & Priority Mail Contract 8 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 15, 2009 (Public Representative Comments).

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 Express Mail & Priority Mail Contract 8 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, at ¶ (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at ¶ (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at ¶ (h).

No commenter opposes the proposed classification of Express Mail & Priority Mail Contract 8 as competitive. Having considered the statutory requirements and the support offered by the Postal

Service, the Commission finds that Express Mail & Priority Mail Contract 8 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 Express Mail & Priority Mail Contract 8 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 Express Mail & Priority Mail Contract 8 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 Express Mail & Priority Mail Contract 8 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. 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 Express Mail & Priority Mail Contract 8 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.

VI. Ordering Paragraphs

It is ordered:

1. Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44) 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**.

Issued: July 27, 2009.

By the Commission.

Ann C. Fisher,
Acting Secretary.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

■ 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 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	Parcel Airlift (PAL) [Reserved for Product Description]	Royal Mail Group Inbound Air Parcel Post Agreement
Market Dominant Product Descriptions	Registered Mail [Reserved for Product Description]	Parcel Select
First-Class Mail	Return Receipt [Reserved for Product Description]	Parcel Return Service
[Reserved for Class Description]	Return Receipt for Merchandise [Reserved for Product Description]	International
Single-Piece Letters/Postcards [Reserved for Product Description]	Restricted Delivery [Reserved for Product Description]	International Priority Airlift (IPA)
Bulk Letters/Postcards [Reserved for Product Description]	Shipper-Paid Forwarding [Reserved for Product Description]	International Surface Airlift (ISAL)
Flats [Reserved for Product Description]	Signature Confirmation [Reserved for Product Description]	International Direct Sacks—M-Bags
Parcels [Reserved for Product Description]	Special Handling [Reserved for Product Description]	Global Customized Shipping Services
Outbound Single-Piece First-Class Mail International [Reserved for Product Description]	Stamped Envelopes [Reserved for Product Description]	Inbound Surface Parcel Post (at non-UPU rates)
Inbound Single-Piece First-Class Mail International [Reserved for Product Description]	Stamped Cards [Reserved for Product Description]	Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
Standard Mail (Regular and Nonprofit) [Reserved for Class Description]	Premium Stamped Stationery [Reserved for Product Description]	International Money Transfer Service
High Density and Saturation Letters [Reserved for Product Description]	Premium Stamped Cards [Reserved for Product Description]	International Ancillary Services
High Density and Saturation Flats/Parcels [Reserved for Product Description]	International Ancillary Services [Reserved for Product Description]	Special Services
Carrier Route [Reserved for Product Description]	International Certificate of Mailing [Reserved for Product Description]	Premium Forwarding Service
Letters [Reserved for Product Description]	International Registered Mail [Reserved for Product Description]	Negotiated Service Agreements
Flats [Reserved for Product Description]	International Return Receipt [Reserved for Product Description]	Domestic
Not Flat-Machinables (NFM)s/Parcels [Reserved for Product Description]	International Restricted Delivery [Reserved for Product Description]	Express Mail Contract 1 (MC2008–5)
Periodicals [Reserved for Class Description]	Address List Services [Reserved for Product Description]	Express Mail Contract 2 (MC2009–3 and CP2009–4)
Within County Periodicals [Reserved for Product Description]	Caller Service [Reserved for Product Description]	Express Mail Contract 3 (MC2009–15 and CP2009–21)
Outside County Periodicals [Reserved for Product Description]	Change-of-Address Credit Card Authentication [Reserved for Product Description]	Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
Package Services [Reserved for Class Description]	Confirm [Reserved for Product Description]	Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
Single-Piece Parcel Post [Reserved for Product Description]	International Reply Coupon Service [Reserved for Product Description]	Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description]	International Business Reply Mail Service [Reserved for Product Description]	Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
Bound Printed Matter Flats [Reserved for Product Description]	Money Orders [Reserved for Product Description]	Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
Bound Printed Matter Parcels [Reserved for Product Description]	Post Office Box Service [Reserved for Product Description]	Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42)
Media Mail/Library Mail [Reserved for Product Description]	Negotiated Service Agreements [Reserved for Class Description]	Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43)
Special Services [Reserved for Class Description]	HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]	Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44)
Ancillary Services [Reserved for Product Description]	Bookspan Negotiated Service Agreement [Reserved for Product Description]	Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
Address Correction Service [Reserved for Product Description]	Bank of America Corporation Negotiated Service Agreement	Priority Mail Contract 1 (MC2008–8 and CP2008–26)
Applications and Mailing Permits [Reserved for Product Description]	The Bradford Group Negotiated Service Agreement	Priority Mail Contract 2 (MC2009–2 and CP2009–3)
Business Reply Mail [Reserved for Product Description]	Part B—Competitive Products	Priority Mail Contract 3 (MC2009–4 and CP2009–5)
Bulk Parcel Return Service [Reserved for Product Description]	2000 Competitive Product List	Priority Mail Contract 4 (MC2009–5 and CP2009–6)
Certified Mail [Reserved for Product Description]	Express Mail	Priority Mail Contract 5 (MC2009–21 and CP2009–26)
Certificate of Mailing [Reserved for Product Description]	Express Mail	Priority Mail Contract 6 (MC2009–25 and CP2009–30)
Collect on Delivery [Reserved for Product Description]	Outbound International Expedited Services	Priority Mail Contract 7 (MC2009–25 and CP2009–31)
Delivery Confirmation [Reserved for Product Description]	Inbound International Expedited Services	Priority Mail Contract 8 (MC2009–25 and CP2009–32)
Insurance	Inbound International Expedited Services 1 (CP2008–7)	Priority Mail Contract 9 (MC2009–25 and CP2009–33)
[Reserved for Product Description]	Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)	Priority Mail Contract 10 (MC2009–25 and CP2009–34)
Merchandise Return Service [Reserved for Product Description]	Priority Mail	Priority Mail Contract 11 (MC2009–27 and CP2009–37)
	Priority Mail	Priority Mail Contract 12 (MC2009–28 and CP2009–38)
	Outbound Priority Mail International	Priority Mail Contract 13 (MC2009–29 and CP2009–39)
	Inbound Air Parcel Post	Priority Mail Contract 14 (MC2009–30 and CP2009–40)
		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)	Priority Mail	[Reserved for Product Description]
Global Plus Contracts	[Reserved for Product Description]	International Certificate of Mailing
Global Plus 1 (CP2008–9 and CP2008–10)	Outbound Priority Mail International	[Reserved for Product Description]
Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)	[Reserved for Product Description]	International Registered Mail
Inbound International	Inbound Air Parcel Post	[Reserved for Product Description]
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)	[Reserved for Product Description]	International Return Receipt
International Business Reply Service	Parcel Select	[Reserved for Product Description]
Competitive Contract 1 (MC2009–14 and CP2009–20)	[Reserved for Group Description]	International Restricted Delivery
Competitive Product Descriptions	Parcel Return Service	[Reserved for Product Description]
Express Mail	[Reserved for Group Description]	International Insurance
[Reserved for Group Description]	International	[Reserved for Product Description]
Express Mail	[Reserved for Group Description]	Negotiated Service Agreements
[Reserved for Product Description]	International Priority Airlift (IPA)	[Reserved for Group Description]
Outbound International Expedited Services	[Reserved for Product Description]	Domestic
[Reserved for Product Description]	International Surface Airlift (ISAL)	[Reserved for Product Description]
Inbound International Expedited Services	[Reserved for Product Description]	Outbound International
[Reserved for Product Description]	International Direct Sacks—M-Bags	[Reserved for Group Description]
Priority	[Reserved for Product Description]	Part C—Glossary of Terms and Conditions
[Reserved for Product Description]	Global Customized Shipping Services	[Reserved]
	[Reserved for Product Description]	Part D—Country Price Lists for International Mail [Reserved]
	International Money Transfer Service	[FR Doc. E9–19256 Filed 8–11–09; 8:45 am]
	[Reserved for Product Description]	BILLING CODE 7710–FW–P
	Inbound Surface Parcel Post (at non-UPU rates)	
	[Reserved for Product Description]	
	International Ancillary Services	