

## POSTAL REGULATORY COMMISSION

## 39 CFR Part 3020

[Docket Nos. MC2008–6, CP2008–14, and CP2008–15; Order No. 105]

## Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

**SUMMARY:** The Commission is adding the Postal Service's negotiated agreements with China Post Group and Hong Kong Post to the competitive product list. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

**DATES:** Effective September 24, 2008.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 73 FR 49723 (August 22, 2008).

In these dockets, the Postal Service requests that the Commission add a new product to the competitive product list and add two new contracts to that competitive product. For the reasons discussed below, the Commission grants the Postal Service's requests.

**I. Background**

On August 5, 2008, the Postal Service filed three requests announcing prices and classification changes for competitive products not of general applicability. The requests incorporate notices, pursuant to 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.* The request in Docket No. MC2008–6 informs the Commission that “the Governors have established prices and classifications not of general applicability for Inbound Direct Entry Contracts with Foreign Postal Administrations,” and attaches a redacted copy of the Governors' Decision.<sup>1</sup> See Request, Attachment 1. The Postal Service also provides a revision of the draft Mail Classification Schedule (MCS) (section 2612) concerning Inbound Direct Entry Contracts with Foreign Postal Administrations to the Request.<sup>2</sup> See Request, Attachment 1, Attachment A.

<sup>1</sup> Request of United States Postal Service to Add Inbound Direct Entry Contracts with Foreign Postal Administrations to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling Governors' Decision and Two Functionally Equivalent Contracts with Foreign Posts, August 5, 2008 (Request).

<sup>2</sup> The draft MCS remains under review. The Commission anticipates providing interested

In support of these dockets, the Postal Service provides a Statement of Supporting Justification of Pranab Shah. See Request, Attachment 2. The Postal Service also provides materials under seal, including the unredacted Governors' Decision in Docket No. MC2008–6. The Postal Service claims that “[p]rices and other contract terms relating to the foreign posts' processes and procedures are highly confidential in the business world . . . [and that its] ability . . . to negotiate individual contracts would be severely compromised if prices . . . [for] these types of agreements were publicly disclosed.” Request at 2–3.

Docket Nos. CP2008–14 and CP2008–15 announce specific Inbound Direct Entry Contracts that the Postal Service has entered into with the individual Foreign Postal Administrations, namely China Post Group and Hong Kong Post, respectively.<sup>3</sup> *Id.* at 2. In support of these dockets, the Postal Service also provides materials, including the contracts and supporting certifications, under seal.<sup>4</sup>

The Postal Service's filings in these dockets are related. Docket No. MC2008–6 establishes, in essence, a shell classification, while Docket Nos. CP2008–14 and CP2008–15 are specific agreements negotiated pursuant to the conditions of the shell classification. Given this interrelationship, the Commission reviews these proceedings together in this order.

In Order No. 43, the Commission issued regulations establishing a modern system of rate regulation, including a list of competitive products. Docket No. RM2007–1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, Appendix A. Among other things, the Commission determined that each negotiated service agreement would initially be classified as a separate product. The Commission also acknowledged the possibility of grouping substantially equivalent agreements as a single product if they exhibit similar cost and market characteristics. *Id.*, paras. 2177 and 3001. In its filings, the Postal Service contends that these two agreements are

persons an opportunity to comment on the draft MCS in the near future.

<sup>3</sup> The Commission characterizes the Governors' Decision and associated materials filed in Docket No. MC2008–6 as material that supports the specific negotiated service agreements filed in Docket Nos. CP2008–14 and CP2008–15.

<sup>4</sup> See PRC Order No. 95, August 11, 2008, at 2 regarding the filing of certifications under seal. The Postal Service is directed to follow the practice established in Docket Nos. CP2008–11, CP2008–12, and CP2008–13 regarding the filing of redacted versions of certifications for the above-captioned “CP” cases.

premised on similar cost and market characteristics and provides arguments to support this claim. Request at 5–6. The Postal Service requests that the Commission classify the two agreements filed in Docket Nos. CP2008–14 and CP2008–15 as part of the same product.

**II. Comments**

Comments were filed by the Public Representative.<sup>5</sup> These comments discuss (1) Confidentiality; (2) the Governors' Decision; (3) pricing, cost coverage, and contribution; (4) functional equivalency; (5) whether the contracts belong on the competitive or market dominant products list; and (6) practical considerations. *Id.* The Public Representative finds that the Postal Service adequately justifies its under seal submissions, has confidence in the Governors' Decision, and acknowledges that the pricing, cost coverage, and contribution comport with the provisions of title 39. *Id.* at 3–5. The Public Representative believes that the Postal Service persuasively reasons that the proposed contracts are functionally equivalent. *Id.* at 5–6. With respect to whether the product should be classified as market dominant or competitive, the Public Representative believes that Inbound Direct Entry contracts are hybrids<sup>6</sup> because they include mostly competitive products but also include inbound First-Class Mail, a market dominant product. *Id.* at 6–10. Due to practical considerations and the fact that the Inbound Direct Entry contracts are predominantly comprised of competitive products, the Public Representative contends that classifying the product as competitive is appropriate. *Id.* at 10–12.

**III. Commission Analysis****A. Statutory Requirements**

The statutory responsibility of the Commission, in this instance, is to assign new products to either the market dominant list or the competitive product list. 39 U.S.C. 3642. As part of this responsibility, the Commission also will preliminarily review the proposals for compliance with the requirements of the Postal Accountability and Enhancement Act (PAEA) of 2006. For proposed competitive products, this includes a review of the provisions

<sup>5</sup> Public Representative Comments in Response to United States Postal Service Request to Add Inbound Direct Entry Contracts with Foreign Postal Administrations to the Competitive Products List, August 25, 2008 (Public Representative Comments).

<sup>6</sup> The term “hybrid” here means has characteristics of both market dominant and competitive products. See Public Representative Comments at 9.

applicable to rates for competitive products. 39 U.S.C. 3633.

The Postal Service explains that adding the Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6) product will allow Foreign Postal Administrations the ability to prepare individual items from their customers for shipment, print USPS mail labels and permit imprints, package the items in receptacles, and dispatch these items to Postal Service incoming acceptance points. *See* Request, Attachment 2, at 2–3. The fees to be charged identified in the Postal Service's Request would cover the sack handling activities upon arrival of the dispatches from the foreign posts. *Id.* The Postal Service believes that adding these agreements to the competitive product list will improve the Postal Service's competitive posture and that the contracts cover their attributable costs, make a positive contribution to coverage of institutional costs, and do not result in subsidization of competitive products by market dominant products. *Id.* at 2.

The Commission has reviewed the financial analyses provided under seal that accompanies the two agreements as well as the comments filed by interested persons. A preliminary review of the proposed Inbound Direct Entry Contract with Foreign China Post Group and the proposed Inbound Direct Entry Contract with Hong Kong Post indicate that they both comport with the provisions applicable to rates for competitive products. Based on the information provided, the Commission finds that the proposed contracts submitted should cover their individual attributable costs (39 U.S.C. 3633(a)(2)); each agreement should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and each should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)).

In determining whether to assign the Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6) product to the market dominant product list or the competitive product list the Commission must consider whether [T]he Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If this is the case, 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 that 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, the market precludes the Postal Service from taking unilateral action to increase prices without the risk of losing volume to private companies. The Postal Service states that large private consolidators and freight forwarders also may offer international shipping arrangements whereby they provide inbound direct entry services under similar conditions using their own networks or the Postal Service's domestic mail network for domestic delivery. Request, Attachment 2, at 3–4. The Postal Service also contends that the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* at 4. The Postal Service believes the classification will have little, if any, impact upon small business concerns, and it is unaware of any small businesses that could offer comparable services. *Id.* Finally, it states that it does not have any data on whether the users/contract partners prefer to have the contracts placed on either the list of competitive or market dominant products. *Id.* at 6.

No commenter opposes the proposed regulatory classification of the Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6) as competitive and no late-filed comments were received,<sup>7</sup> although the Public Representative does raise an issue with respect to the proper classification of the contracts. Having considered the statutory requirements, the argument put forth by the Postal Service, and the public comments, the Commission finds that the contracts are appropriately classified and should be added to the list of competitive products. The product/contracts are for the provision of the service of accepting sacks of certain types of mail and entering the parcels contained in the sacks into the domestic mailstream at published domestic rates. *See* Request at 5. For the provision of these services, the Postal Service charges a sack handling fee, regardless of the actual type of mail that is contained in the sacks. Since the types of mail contained in the sacks do

not receive discounted postage, the Commission does not view these contracts as “hybrid” products.<sup>8</sup>

#### B. Substantially Equivalent Agreements

The Postal Service has filed two agreements with foreign postal administrations that it believes are substantially similar, and accordingly should be grouped under one product. Request at 6. It argues these contracts share the same cost and market characteristics; in particular, they both cover the same underlying services and similar preparation requirements. *Id.* at 5–6.

The Postal Service also identifies differences between the two proposed new contracts. *Id.* It notes the following differences: (1) Different account types are authorized in order to make payments, and (2) different dispute resolution procedures are allowed.

The Commission has reviewed the contracts in Docket Nos. CP2008–14 and CP2008–15 and finds those agreements to be substantially equivalent in all pertinent respects. The contracts will be classified as one product within the competitive product list.

The revisions to the competitive product list are shown below the signature of this Order, and shall become effective upon publication in the **Federal Register**.

#### C. Updating the Mail Classification Schedule

The agreements contain provisions for early termination and automatic renewal. The Postal Service shall promptly notify the Commission of an early termination no later than the actual termination date. The Commission then will remove the contract from the Mail Classification Schedule at the earliest possible opportunity. The Postal Service also shall notify the Commission of an automatic renewal of the agreement 15 days prior to its occurrence. Otherwise, the Commission will assume that the contract has lapsed and remove the agreement from the Mail Classification Schedule without notice.

#### IV. Ordering Paragraphs

##### *It is Ordered:*

1. The China Post Group contract submitted in Docket No. CP2008–14 and the Hong Kong Post contract submitted in Docket No. CP2008–15 will be added to the competitive product list as one product under Negotiated Service Agreements as Inbound Direct Entry

<sup>8</sup> This finding is preliminary and does not preclude the Commission from revisiting this issue at a future date if circumstances warrant. *See* 39 U.S.C. 3642.

<sup>7</sup> *See* Public Representative Comments at 2.

Contracts with Foreign Postal Administrations (MC2008–6).

2. The Postal Service is directed to file redacted versions of the certifications for the above-captioned cases as discussed in the body of this order.

3. The Secretary shall arrange for publication of this Order in the **Federal Register**.

Issued September 4, 2008.  
By the Commission.

**Steven W. Williams,**  
*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 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

###### 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)

Priority Mail	Express Mail	[Reserved for Product Description]
Priority Mail	[Reserved for Group Description]	Inbound Surface Parcel Post (at non-UPU rates)
Outbound Priority Mail International	Express Mail	[Reserved for Product Description]
Inbound Air Parcel Post	[Reserved for Product Description]	International Ancillary Services
Parcel Select	Outbound International Expedited Services	[Reserved for Product Description]
Parcel Return Service	[Reserved for Product Description]	International Certificate of Mailing
International	Inbound International Expedited Services	[Reserved for Product Description]
International Priority Airlift (IPA)	[Reserved for Product Description]	International Registered Mail
International Surface Airlift (ISAL)	Priority	[Reserved for Product Description]
International Direct Sacks—M-Bags	Priority Mail	International Return Receipt
Global Customized Shipping Services	[Reserved for Product Description]	[Reserved for Product Description]
Inbound Surface Parcel Post (at non-UPU rates)	Outbound Priority Mail International	International Restricted Delivery
International Money Transfer Service	[Reserved for Product Description]	[Reserved for Product Description]
International Ancillary Services	Inbound Air Parcel Post	International Insurance
Special Services	[Reserved for Product Description]	[Reserved for Product Description]
Premium Forwarding Service	Parcel Select	Negotiated Service Agreements
Negotiated Service Agreements	[Reserved for Group Description]	[Reserved for Group Description]
Domestic	Parcel Return Service	Domestic
Express Mail Contract 1 (MC2008–5)	[Reserved for Group Description]	[Reserved for Product Description]
Outbound International	International	Outbound International
Global Expedited Package Services (GEPS) Contracts	[Reserved for Group Description]	[Reserved for Group Description]
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13)	International Priority Airlift (IPA)	
Global Plus Contracts	[Reserved for Product Description]	
Global Plus 1 (CP2008–9 and CP2008–10)	International Surface Airlift (ISAL)	
Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6)	[Reserved for Product Description]	
Competitive Product Descriptions	International Direct Sacks—M-Bags	
	[Reserved for Product Description]	
	Global Customized Shipping Services	
	[Reserved for Product Description]	
	International Money Transfer Service	

**Part C—Glossary of Terms and Conditions**  
**[Reserved]**

**Part D—Country Price Lists for International Mail**  
**[Reserved]**

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