

POSTAL REGULATORY COMMISSION**39 CFR Part 3020**

[Docket Nos. CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24; Order No. 107]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding several recently-negotiated Global Expedited Package Service contracts to the competitive product list. This action is consistent with changes in a recent law governing postal operations. Re-publication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective October 17, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

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SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 50374 (August 26, 2008).

In these dockets, the Postal Service proposes to add seven individual negotiated service agreements, namely, specific Global Expedited Package Service (GEPS) contracts, to the Global Expedited Package Services 1 (GEPS 1) product established in Docket No. CP2008–5. For the reasons discussed below, the Commission grants the Postal Service's proposals.

I. Background

On August 14, 2008, the Postal Service filed seven identical notices, which have been assigned to Docket Nos. CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24, announcing price and classification changes for competitive products not of general applicability.¹ These notices announce individual negotiated service agreements and specific GEPS contracts which the Postal Service has executed with individual mailers. The Postal Service believes each is functionally equivalent

to the GEPS 1 product established in Docket No. CP2008–5.

These dockets have been filed pursuant to 39 U.S.C. 3633 and 39 CFR 3015.5. In addition, the Postal Service contends that the contracts are in accord with Order No. 86.² In Order No. 86, the Commission found that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633 and if they are substantially equivalent to the initial GEPS 1 contract.³

In support of each of these dockets, the Postal Service also filed the contract and supporting materials under seal. The Governors' Decision supporting the GEPS 1 product was filed in consolidated Docket No. CP2008–5.⁴ The Notices also contain the Postal Service's arguments that these agreements are substantially equivalent and that they exhibit similar cost and market characteristics to the GEPS 1 product. Notices at 3–5.

In Order No. 100, the Commission gave notice of the seven dockets, appointed a Public Representative, and provided the public with an opportunity to comment.⁵

II. Comments

Comments were filed by the Public Representative.⁶ The Public Representative's comments focus on five areas: (1) Cost coverage; (2) appropriate classification; (3) increased access to U.S. goods by consumers; (4) volume projections; and (5) selection of economic adjustment factors. The Public Representative concludes that the seven contracts at issue satisfy the requirements of 39 U.S.C. 3633 regarding cost coverage, the lack of cross-subsidization, and contribution to institutional costs. Public Representative Comments at 3–4. The Public Representative also believes that the contracts are substantially similar and any differences between them and the original GEPS 1 contract are immaterial. *Id.* at 5. Accordingly, the Public Representative contends that

² Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86).

³ Order No. 86 at 7.

⁴ Docket No. CP2008–5, United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08–7, July 23, 2008.

⁵ PRC Order No. 100, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreements, August 19, 2008 (Order No. 100).

⁶ Public Representative Comments in Response to United States Postal Service Notice of Global Expedited Package Services Contract, September 3, 2008 (Public Representative Comments). On September 3, 2008, the Public Representative also filed a Motion for Late Acceptance of Comments by the Public Representative. The motion is granted.

these contracts should be included as part of the GEPS 1 product category. *Id.*

The remainder of the Public Representative's comments focuses on the benefits of the contracts to U.S. consumers, the sufficiency of volume projections, and the need to exercise special care in selecting economic adjustment factors. *Id.* at 5–8.

III. Commission Analysis

The Postal Service proposes to add additional contracts under the GEPS 1 product that was created by Docket No. CP2008–5. In Order No. 86, the Commission noted that:

If the Postal Service determines that it has entered into an agreement substantially equivalent to GEPS 1 with another mailer, it may file such a contract under rule 3015.5. In each case, the individual contract must be filed with the Commission, and each contract must meet the requirements of 39 U.S.C. 3633. The Postal Service shall identify all significant differences between the new contract and the pre-existing product group, GEPS 1. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The Commission will verify whether or not any subsequent contract is in fact substantially equivalent. Contracts not having substantially the same terms and conditions as the GEPS 1 contract must be filed under 39 CFR part 3020, subpart B.

Order No. 86 at 7. First, the Commission reviews the contracts to ensure that they are substantially equivalent to the pre-existing contract classified as part of the GEPS 1 product and thus belong as part of that product. Second, the Commission must ensure that the contracts at issue in this proceeding independently satisfy the requirements of rule 3015.5 and 39 U.S.C. 3633.

Here, the Postal Service has filed seven additional contracts (Docket Nos. CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24) that it contends are substantially similar to the one submitted in Docket No. CP2008–5 and accordingly should be grouped under the GEPS 1 product. Notices at 3–5. It argues these contracts share the same cost and market characteristics as the previously classified GEPS 1 contract, in particular, those of small or medium-sized businesses that mail their products directly to foreign destinations using either Express Mail International, Priority Mail International, or both. *Id.* at 4.

The Postal Service also identifies what it terms “incidental” and “minor” differences between the proposed new contracts and the pre-existing product group, GEPS 1. *Id.* at 4–5. In particular, it notes that the contracts may differ in minor respects, for example, prices may

¹ Notice of United States Postal Service of Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreement, August 14, 2008, filed in Docket Nos. CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24 (Notices).

vary due to volume commitments, signing dates of the agreements, existence of previous agreements, and other case specific and negotiation related factors. *Id.* at 4–5.

The Commission has reviewed the contracts in Docket Nos. CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24 and finds those agreements to be substantially equivalent in all pertinent respects to the GEPS 1 product.⁷

Additionally, the Commission reviews the filings to ensure that they meet the requirements of rules 3015.5 and 3015.7 and of 39 U.S.C. 3633. The Commission has reviewed the financial analysis provided under seal that accompanies the agreements in all seven dockets as well as the comments filed in this proceeding.

The Public Representative “sees no specific cause for concern about the accuracy of the volume projections associated with these contracts,” but recommends that “the Postal Service * * * in its sealed filings identify the nature and source of these volume projections, in general terms, so that the Commission might properly evaluate the significance of possible vulnerabilities or weaknesses underlying those projections.” Public Representative Comments at 7. The recommendation is not unreasonable. However, for purposes of the Commission’s preliminary analysis with regard to the contracts at issue herein, it does not appear that a detailed analysis of the nature and sources of these volume projections would be warranted at this time. If, as a result of the Commission’s Annual Compliance Determination, the volume projections are shown to be unreliable, appropriate remedial action may be taken.

The Public Representative also recommends that the Postal Service should take particular care to ensure that it selects proper economic adjustment factors. *Id.* at 7–8. The contracts at issue have a relatively short duration, one year. *See* Notices at 2. Thus, the risk associated with such factors, *e.g.*, that the Postal Service may fail to meet its statutory cost coverage requirements, appears to be minimal.

Based on the information provided, the Commission finds that all seven proposed contracts submitted should cover their 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, a preliminary review of the proposed contracts indicates that they comport with the provisions applicable to rates for competitive products.

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**.

IV. Ordering Paragraphs

It is Ordered:

1. The contracts filed in Docket Nos. CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23 and CP2008–24 are added to the product category Global Expedited Package Services 1 (CP2008–5).

2. The Secretary shall arrange for publication of this order in the **Federal Register**.

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:

■ 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:

PART 3020—PRODUCT LISTS

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

Part A—Market Dominant Products

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]

⁷ The differences between the contracts and the originally classified GEPS 1 contract do not appear to be substantial. However, this finding does not preclude the Commission from revisiting this issue at a future date if circumstances warrant.

Bound Printed Matter Parcels [Reserved for Product Description]	Change-of-Address Credit Card Authentication [Reserved for Product Description]	Global Plus 1 (CP2008-9 and CP2008-10)
Media Mail/Library Mail [Reserved for Product Description]	Confirm [Reserved for Product Description]	Global Plus 2 (MC2008-7, CP2008-16 and CP2008-17)
Special Services [Reserved for Class Description]	International Reply Coupon Service [Reserved for Product Description]	Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6)
Ancillary Services [Reserved for Product Description]	International Business Reply Mail Service [Reserved for Product Description]	Competitive Product Descriptions
Address Correction Service [Reserved for Product Description]	Money Orders [Reserved for Product Description]	Express Mail [Reserved for Group Description]
Applications and Mailing Permits [Reserved for Product Description]	Post Office Box Service [Reserved for Product Description]	Express Mail [Reserved for Product Description]
Business Reply Mail [Reserved for Product Description]	Negotiated Service Agreements [Reserved for Class Description]	Outbound International Expedited Services [Reserved for Product Description]
Bulk Parcel Return Service [Reserved for Product Description]	HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]	Inbound International Expedited Services [Reserved for Product Description]
Certified Mail [Reserved for Product Description]	Bookspan Negotiated Service Agreement [Reserved for Product Description]	Priority [Reserved for Product Description]
Certificate of Mailing [Reserved for Product Description]	Bank of America Corporation Negotiated Service Agreement	Priority Mail [Reserved for Product Description]
Collect on Delivery [Reserved for Product Description]	The Bradford Group Negotiated Service Agreement	Outbound Priority Mail International [Reserved for Product Description]
Delivery Confirmation [Reserved for Product Description]	Part B—Competitive Products	Inbound Air Parcel Post [Reserved for Product Description]
Insurance [Reserved for Product Description]	Competitive Product List	Parcel Select [Reserved for Group Description]
Merchandise Return Service [Reserved for Product Description]	Express Mail	Parcel Return Service [Reserved for Group Description]
Parcel Airlift (PAL) [Reserved for Product Description]	Express Mail	International [Reserved for Group Description]
Registered Mail [Reserved for Product Description]	Outbound International Expedited Services	International Priority Airlift (IPA) [Reserved for Product Description]
Return Receipt [Reserved for Product Description]	Inbound International Expedited Services	International Surface Airlift (ISAL) [Reserved for Product Description]
Return Receipt for Merchandise [Reserved for Product Description]	Inbound International Expedited Services 1 (CP2008-7)	International Direct Sacks—M-Bags [Reserved for Product Description]
Restricted Delivery [Reserved for Product Description]	Priority Mail	Global Customized Shipping Services [Reserved for Product Description]
Shipper-Paid Forwarding [Reserved for Product Description]	Priority Mail	International Money Transfer Service [Reserved for Product Description]
Signature Confirmation [Reserved for Product Description]	Outbound Priority Mail International	Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
Special Handling [Reserved for Product Description]	Inbound Air Parcel Post	International Ancillary Services [Reserved for Product Description]
Stamped Envelopes [Reserved for Product Description]	Parcel Select	International Certificate of Mailing [Reserved for Product Description]
Stamped Cards [Reserved for Product Description]	Parcel Return Service	International Registered Mail [Reserved for Product Description]
Premium Stamped Stationery [Reserved for Product Description]	International	International Return Receipt [Reserved for Product Description]
Premium Stamped Cards [Reserved for Product Description]	International Priority Airlift (IPA)	International Restricted Delivery [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]	International Surface Airlift (ISAL)	International Insurance [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]	International Direct Sacks—M-Bags	Negotiated Service Agreements [Reserved for Group Description]
International Registered Mail [Reserved for Product Description]	Global Customized Shipping Services	Domestic [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]	Inbound Surface Parcel Post (at non-UPU rates)	Outbound International [Reserved for Group Description]
International Restricted Delivery [Reserved for Product Description]	International Money Transfer Service	
Address List Services [Reserved for Product Description]	International Ancillary Services	
Caller Service [Reserved for Product Description]	Special Services	
	Premium Forwarding Service	
	Negotiated Service Agreements	
	Domestic	
	Express Mail Contract 1 (MC2008-5)	
	Outbound International	
	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	

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