

POSTAL REGULATORY COMMISSION**39 CFR Part 3020**[Docket Nos. MC2009–3 and CP2009–4;
Order No. 127]**Administrative Practice and Procedure,
Postal Service****AGENCY:** Postal Regulatory Commission.**ACTION:** Final rule.

SUMMARY: The Commission is adding Express Mail Contract 2 (MC2009–3) to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a related Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective November 13, 2008.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 65708 (November 4, 2008).

The Postal Service seeks to add a new product identified as Express Mail Contract 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On October 24, 2008, 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 Contract 2 to the Competitive Product List. The Postal Service asserts that Express Mail Contract 2 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. MC2009–3.¹

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 has been assigned Docket No. CP2009–4. 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 Express Mail Contract

2;² (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;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. Request, 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). *See id.*, Attachment E.

The Postal Service filed much of the supporting materials, including the Governors’ Decision and the specific Express Mail Contract 2, 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. *Id.* at 2.

In Order No. 121, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁷

II. Comments

Comments were filed by the Public Representative.⁸ No filings were submitted by other interested parties. The Public Representative’s comments focus principally on confidentiality and pricing under the contract. Public Representative Comments at 2–4.

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.

⁷ PRC Order No. 121, Notice and Order Concerning Express Mail Contract 2 Negotiated Service Agreement, October 29, 2008 (Order No. 121).

⁸ Public Representative Comments in Response to United States Postal Service Request to Add Express Mail Contract 2 to Competitive Product List, November 5, 2008 (Public Representative Comments).

The Public Representative states that a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service. Also, based upon a review of materials filed by the Postal Service in this proceeding, the Public Representative concludes that the contract is beneficial to both parties as well as the general public. *Id.* at 2–3.

The Public Representative notes that the contract is intended to promote new volumes for the Postal Service and provide incentives for the shipper. He concludes, *inter alia*, that the contract should generate sufficient revenue to cover the product’s attributable costs, and contribute to the recovery of total institutional costs assigned to competitive products. *Id.* at 3–4.

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 filed by the Public Representative.

Statutory requirements. The Commission’s statutory responsibilities, in this instance, entail assigning Express Mail Contract 2 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 Express Mail Contract 2 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 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

¹ Request of the United States Postal Service to Add Express Mail Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 24, 2008 (Request).

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. Request, Attachment D, at 2. 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.* It further states that the contract partner supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that due to the fact that the expedited delivery market requires a substantial infrastructure to support a national network, only large carriers serve the market under consideration. Accordingly, the Postal Service is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed classification of Express Mail Contract 2 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 2 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service's filing seeks to establish a new domestic Express Mail product. 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 Postal Service contends that adding the Express Mail Contract 2 product will result in processing Express Mail pieces that are less costly for the Postal Service than the average Express Mail piece. *See id.*, Attachment A. It believes that its financial analysis shows that these cost savings can be accomplished 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. *Id.*, Attachment E, at 1.

Based on the data submitted and the comments received, the Commission finds that Express Mail Contract 2 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 Express Mail Contract 2 indicates that it

comports with the provisions applicable to rates for competitive products.

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 Express Mail Contract 2 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.

IV. Ordering Paragraphs

It is Ordered:

1. Express Mail Contract 2 (MC2009–3 and CP2009–4) 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 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.

Steven W. Williams,
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)/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]	Confirm [Reserved for Product Description]	Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6, CP2008-14 and CP2008-15)
Ancillary Services [Reserved for Product Description]	International Reply Coupon Service [Reserved for Product Description]	Competitive Product Descriptions
Address Correction Service [Reserved for Product Description]	International Business Reply Mail Service [Reserved for Product Description]	Express Mail [Reserved for Group Description]
Applications and Mailing Permits [Reserved for Product Description]	Money Orders [Reserved for Product Description]	Express Mail [Reserved for Product Description]
Business Reply Mail [Reserved for Product Description]	Post Office Box Service [Reserved for Product Description]	Outbound International Expedited Services [Reserved for Product Description]
Bulk Parcel Return Service [Reserved for Product Description]	Negotiated Service Agreements [Reserved for Class Description]	Inbound International Expedited Services [Reserved for Product Description]
Certified Mail [Reserved for Product Description]	HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]	Priority [Reserved for Product Description]
Certificate of Mailing [Reserved for Product Description]	Bookspan Negotiated Service Agreement [Reserved for Product Description]	Priority Mail [Reserved for Product Description]
Collect on Delivery [Reserved for Product Description]	Bank of America Corporation Negotiated Service Agreement	Outbound Priority Mail International [Reserved for Product Description]
Delivery Confirmation [Reserved for Product Description]	The Bradford Group Negotiated Service Agreement	Inbound Air Parcel Post [Reserved for Product Description]
Insurance [Reserved for Product Description]	Part B—Competitive Products	Parcel Select [Reserved for Group Description]
Merchandise Return Service [Reserved for Product Description]	Competitive Product List	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]	Express Mail	International Priority Airlift (IPA) [Reserved for Product Description]
Return Receipt [Reserved for Product Description]	Outbound International Expedited Services	International Surface Airlift (ISAL) [Reserved for Product Description]
Return Receipt for Merchandise [Reserved for Product Description]	Inbound International Expedited Services	International Direct Sacks—M-Bags [Reserved for Product Description]
Restricted Delivery [Reserved for Product Description]	Inbound International Expedited Services 1 (CP2008-7)	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]	Priority Mail	Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
Special Handling [Reserved for Product Description]	Outbound Priority Mail International	International Ancillary Services [Reserved for Product Description]
Stamped Envelopes [Reserved for Product Description]	Inbound Air Parcel Post	International Certificate of Mailing [Reserved for Product Description]
Stamped Cards [Reserved for Product Description]	Parcel Select	International Registered Mail [Reserved for Product Description]
Premium Stamped Stationery [Reserved for Product Description]	Parcel Return Service	International Return Receipt [Reserved for Product Description]
Premium Stamped Cards [Reserved for Product Description]	International	International Restricted Delivery [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]	International Priority Airlift (IPA)	International Insurance [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]	International Surface Airlift (ISAL)	Negotiated Service Agreements [Reserved for Group Description]
International Registered Mail [Reserved for Product Description]	International Direct Sacks—M-Bags	Domestic [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]	Global Customized Shipping Services	Outbound International [Reserved for Group Description]
International Restricted Delivery [Reserved for Product Description]	Inbound Surface Parcel Post (at non-UPU rates)	Part C—Glossary of Terms and Conditions [Reserved]
Address List Services [Reserved for Product Description]	International Money Transfer Service	Part D—Country Price Lists for International Mail [Reserved]
Caller Service [Reserved for Product Description]	International Ancillary Services	
Change-of-Address Credit Card Authentication [Reserved for Product Description]	Special Services	
	Premium Forwarding Service	
	Negotiated Service Agreements	
	Domestic	
	Express Mail Contract 1 (MC2008-5)	
	Express Mail Contract 2 (MC2009-3 and CP2009-4)	
	Priority Mail Contract 1 (MC2008-8 and CP2008-26)	
	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	
	Global Plus 1 (CP2008-9 and CP2008-10)	
	Global Plus 2 (MC2008-7, CP2008-16 and CP2008-17)	