

initial GEPS 1 contract filed in Docket No. CP2008–5.³ *Id.* at 1.

The instant contract. The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. It submitted the contract and supporting material under seal, and attached a redacted copy of the contract and certified statement required by 39 CFR 3015.5(c)(2) to the Notice as Attachments 1 and 2, respectively.⁴ *Id.* at 1–2. On June 3, 2009, the Post revised information under seal to replace information originally filed under seal and an updated Certification of Compliance with 39 U.S.C. 3633.⁵ The term of the contract is one year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice addresses reasons why the instant GEPS 1 contract fits within the Mail Classification Schedule language for GEPS 1. The Postal Service explains that the instant contract is functionally equivalent to the GEPS 1 contracts filed previously because it shares similar cost and market characteristics and, therefore, the contracts should be classified as a single product. *Id.* at 3. It states that in Governors' Decision No. 08–7, a pricing formula and classification system was established to ensure that each contract meets the statutory and regulatory requirements of 39 U.S.C. 3633. The Postal Service affirms that the instant contract demonstrates its functional equivalence with the previous GEPS 1 contracts because of several factors: The contract term of one year which applies to all GEPS 1 contracts, requirement of payment through permit imprint, and its total costs are volume variable as are the total costs associated with all GEPS 1 contracts. *Id.* at 4. It explains that even though prices may be different based on volume or postage commitments made by the customers, these differences do not affect the contracts' functional equivalency because the total costs associated with GEPS 1 contracts are volume variable.

The Postal Service also states the instant contract has minor differences reflected in the language of this agreement compared to other GEPS 1

contracts. *Id.* These differences include provisions which reflect differences between the mailers including: (1) Language which addresses the connection between completion of the regulatory review process and expiration of a previous or existing agreement, if applicable;⁶ (2) terms which clarify that other Postal Service products are available to the customer subject to the same regulatory standards as other mailers in general; (3) exclusion of certain flat rate products from the mail qualifying for discounts; (4) requiring the mailer to provide notice of intent to mail and to conform with the acceptance times and scheduling procedures at the acceptance site; (5) specific liquidated damages terms negotiated with this mailer; (6) terms to explain the mailer's volume and revenue commitment calculation upon early termination of the contract; and (7) clarifying language for regulatory entity obligations related to the contract or revisions to update terms or references from a prior agreement. *Id.* at 4–6.

The Postal Service states that these differences related to particular mailers are “incidental differences” and do not change the conclusion that these agreements are functionally equivalent in a substantive aspect. *Id.* at 6.

The Postal Service requests that this contract be included within the GEPS 1 product. *Id.*

II. Notice of Filing

The Commission establishes Docket No. CP2009–35 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than June 11, 2009. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Paul L. Harrington to serve as Public Representative in the captioned filings.

It is Ordered:

1. The Commission establishes Docket No. CP2009–35 for consideration of the matters raised in this docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the

interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than June 11, 2009.

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

By the Commission.

Judith M. Grady,
Acting Secretary.

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POSTAL REGULATORY COMMISSION

[Docket No. R2009–4; Order No. 220]

Postal Service Price Changes

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is conducting a review of the Postal Service's planned price adjustment for Standard Mail High Density flat pieces. This document invites public comment.

DATES: Comments are due June 22, 2009.

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

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

SUPPLEMENTARY INFORMATION:

I. Overview

On June 1, 2009, the Postal Service filed with the Commission a notice announcing its intention to adjust prices for Standard Mail High Density flat pieces pursuant to 39 U.S.C. 3622 and 39 CFR Part 3010.¹ The proposed adjustment has a planned implementation date of July 19, 2009. The Postal Service submits that this proposal represents a way that it can take advantage of its greater pricing flexibility for market dominant products under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006), to “respond quickly and flexibly to perceived needs in the mailing community.” *Id.* at 3.

II. Postal Service Filing

Price adjustment. The proposed price adjustment reduces prices for the Standard Mail High Density flats price categories for both commercial and nonprofit mailpieces. *Id.* at 2. The

³ See PRC Order No. 86, Order Concerning Global Expedited Package Services Contracts, June 27, 2008, at 7 (Order No. 86).

⁴ Attachment 1 to the Notice consists of a redacted version of the contract. Attachment 2 is a redacted Certification of Compliance with 39 U.S.C. 3633.

⁵ Notice of United States Postal Service Filing (Under Seal) of Revised Information and Revised Certification, June 3, 2009.

⁶ The Postal Service states that some of the contracts generally provide that if all applicable reviews have not been completed at the time an older contract expires, the mailer must pay published prices until some alternative becomes available. Because in the instant contract the mailer is a new customer, this provision is not included.

¹ United States Postal Service Notice of Market-Dominant Price Adjustment, June 1, 2009 (Notice).

adjustment decreases the minimum per-piece prices for commercial and nonprofit High Density flats by 0.1 cent, and decreases the pound price element for commercial and nonprofit High Density flats to match the Standard Mail Saturation flats pound price element. The per-piece price element for pound rated pieces increases by 0.7 cents per piece to "ensure a smooth transition at the breakpoint," according to the Postal Service. *Id.* at 3. Dropship discounts for High Density flats do not change under this proposal.

In support of the proposal, the Postal Service explains that it has heard the concerns expressed by High Density flats mailers on the detrimental impact that the above-average price increases implemented on May 11, 2009 will have on their businesses. After taking this concern into consideration, the Postal Service determined that High Density flat prices that reflect an increase from the previous year similar to the average Standard Mail increase are more appropriate at this time. *Id.* at 2.

Conformance with 39 CFR Part 3010. The Postal Service's proposed schedule of prices appears in Appendix A as draft Mail Classification Schedule language, which is attached to the Notice. *Id.* at 1. It also represents, in conformance with the notice requirements of 39 CFR 3010.14(a)(3), that it will issue public notice of the price changes at least 45 days before the effective date via several additional means, including issuing notice of the price changes on the Postal Service's Web site (<http://www.usps.com>), the *Postal Explorer* Web site (<http://www.pe.usps.com>), the *DMM [Domestic Mail Manual] Advisory*, and the *P&C [Producers and Consumers] Weekly*, and a press release announcing the changes. The Postal Service identifies Joseph Moeller, Manager, Pricing, as the official available to provide prompt responses to requests for clarification from the Commission. *Id.* at 2.

Impact on the price cap. Because the proposed High Density flat price adjustments are decreases and not part of the annual CPI cap price change, the Postal Service considers this price adjustment to be outside the Commission's current rules. *Id.* at 3. The Postal Service "proposes that the adjustments have no impact on price cap issues, but would welcome other views." *Id.* Accordingly, the Postal Service has made no calculation of cap or price changes described in Commission rule 3010.14(b)(1) through (4). The Postal Service "is not claiming any new unused rate adjustment

authority as a result of this price decrease." *Id.*²

Objectives and factors. The Postal Service lists and discusses what it considers the relevant objectives and factors of 39 U.S.C. 3622 as to their relationship to the proposed price adjustment. *Id.* at 4–8. It believes at most, the price reductions will cause only a modest decrease in Postal Service revenues, and could potentially avoid diversion of large volumes of mail currently paying High Density flats prices to non-postal delivery.

Workshare discounts. The Postal Service maintains its view that the price differences between the High Density categories and the Saturation and Carrier Route categories are not workshare discounts. It recognizes that the Commission has instituted Docket No. RM2009–3 to consider that issue. In this case, the Postal Service provides in Appendix B (and an associated Excel file) a table showing the cost and price differences, as well as passthroughs for Carrier Route, High Density, and Saturation flats (both commercial and nonprofit) following the adjustments to the prices of High Density flats. The Postal Service notes that none of the passthroughs exceeds 100 percent, so the limitations of section 3622(e) do not apply. It explains that all of the passthroughs for the High Density/Carrier Route relationship are slightly higher, and the passthroughs for the High Density/Saturation relationship are slightly lower than those reported in Docket No. R2009–2 due to the instant proposed High Density flats price reduction.

Preferred rates. The Postal Service explains that nonprofit High Density flats receive the same price reductions as commercial flats. Due to the fact that the proposed price changes apply to both commercial and nonprofit flats and due to the small volumes of High Density nonprofit flats, the Postal Service submits that the required 60 percent ratio, required under 39 U.S.C. 3626, between commercial and nonprofit prices is not altered as a result of the proposed price adjustment.

III. Commission Action

The Commission establishes Docket No. R2009–4 to consider all matters related to the Notice as required by 39 U.S.C. 3622.

Comments. The Commission's rules provide for a 20-day comment period starting from the date of the filing of the

² The Postal Service submits that the unused price adjustment authority for Standard Mail should remain at 0.081 percent. *Id.* at 3. See Order No. 191, Order Reviewing Postal Service Market Dominant Price Adjustment, May 16, 2009.

Notice. See 39 CFR 3010.13(a)(5). Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3622 and 39 CFR part 3010. In particular, the Commission requests that interested parties (including the Postal Service) address the following topics:

1. This is the first Postal Service request for a permanent rate decrease in rates of general applicability. The Postal Service states that it "proposes that the adjustments have no impact on price cap issues, but would welcome other views." *Id.* at 3. Title 39 U.S.C. 3622(d)(1)(A) states that the Commission's system of rate regulation must include regulations that include an annual limitation calculation from the last date that "the Postal Service files its notice of its intention to *increase* rates." 39 U.S.C. 3622(d)(1)(A) (emphasis added). Does this provision suggest that permanent rate decreases in rates of general applicability do not require an analysis under section 3622(d)(1)(A)?

2. If the price cap under section 3622(d)(1)(A) does not apply to this case, is an analysis under section 3622(d)(2)(C) (relating to unused rate adjustment authority) also not required?

3. Notwithstanding the potential application of section 3622(d)(2)(C) to this case, can the Postal Service waive some or part of its unused rate adjustment authority? Can the Commission enforce such a waiver?

4. The Notice states that "the Postal Service is not claiming any new unused rate adjustment authority as a result of this price decrease." *Id.* at 3. Should this statement be construed as an intention by the Postal Service to waive any resulting additional unused rate adjustment authority that may result due to the rate decreases from the instant rate adjustment?

Comments are due no later than June 22, 2009.

Public representative. The Commission appoints Kenneth E. Richardson to represent the interests of the general public in this proceeding. See 39 U.S.C. 505. Pursuant to rule 3010.13(c), the Commission will issue its determination in this proceeding by July 6, 2009.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2009–4 to consider matters raised by the Postal Service's June 1, 2009 filing.

2. Interested persons may submit comments on the planned price adjustments. Comments are due June 22, 2009.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth E. Richardson to represent the interests of the general public in this proceeding.

4. The Commission directs the Secretary of the Commission to arrange for prompt publication of this Notice in the **Federal Register**.

By the Commission.

Judith M. Grady,
Acting Secretary.

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POSTAL REGULATORY COMMISSION

[Docket No. R2009-3; Order No. 219]

Special Summer Postal Rate Program

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Postal Service has prepared, and the Commission has approved, a special program offering reduced rates for Standard mailers this summer. This document addresses related issues and provides pertinent details.

DATES: Effective June 11, 2009.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel,
202-789-6820 and
stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On May 1, 2009, the Postal Service filed with the Commission a notice announcing its intention to adjust prices for Standard Mail letters and flats pursuant to 39 U.S.C. 3622 and 39 CFR part 3010.¹ The proposed adjustment is in the form of a "Standard Mail Volume Incentive Pricing Program" (Summer Sale program) with a planned implementation date of July 1, 2009 and a planned expiration date of September 30, 2009. The Summer Sale program represents a reasoned approach by the Postal Service to exercise its flexibility in market dominant pricing under the Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3218 (2006).

In Order No. 209, the Commission established Docket No. R2009-3 to consider matters raised by the Postal Service's filing, appoint public representatives, and afford interested persons an opportunity to comment.² By

this order, the Commission approves the proposed Standard Mail Volume Incentive Pricing Program.

The Commission finds the proposal to be a judicious exercise of the Postal Service's pricing flexibility under the PAEA. The Postal Service is to be commended for its response to current market conditions. Much can be learned from what, in essence, is a short-term pricing experiment. However, the program is not without risks. Thus, development and use of appropriate metrics in evaluating the program are critical in determining whether the program is successful, and also for assessing the long-term implications of such an approach.

II. Standard Mail Volume Incentive Pricing Program

A. Postal Service Filing

The Postal Service notes that the Summer Sale program is necessary to counteract the dramatic volume reduction due to the economy, support a struggling mailing industry, and increase volume during a typically low volume period in which there is excess capacity; and secondarily to improve customer relations, to fine tune future programs, to gather feedback from customers, and to gather data which may improve postal data systems. Notice at 2-3. The Postal Service's Notice provides a high level overview of the Summer Sale program, identifying its salient features as follows.³

Under the proposed Summer Sale program, eligible mailers will receive a 30 percent rebate of postage paid on the volume of Standard Mail letters and flats mailed from July 1, 2009 to September 30, 2009 that exceeds mailer-specific thresholds.⁴ The rebate may be reduced for volumes shifted from October 2009 into the sales period.⁵ Notice at 3-4.

Eligibility for the Summer Sale program is limited to mailers who are permit holders who have a demonstrable volume of at least 1 million Standard Mail letters and flats

between October 1, 2007 and March 31, 2008 for one or more permit imprint advance deposit accounts, pre-canceled stamp permits, or postage meter permits. *Id.* at 4.

Mail service providers are excluded from the program to help ensure that the Summer Sale program generates new volumes, rather than shifts existing volumes. However, individual mailers who meet the above criteria but use a mail service provider may participate if they meet certain conditions. *Id.* at 4-5.

B. Chairman's Information Request No. 1 (CHIR No. 1)

CHIR No. 1 was designed to clarify the Postal Service's proposal. The responses substantially expand on the Postal Service initial filing and provide essential details regarding the scope of the program and its underlying basis. CHIR No. 1 sought information on metrics to measure the success of the Summer Sale program, including complete cost analyses and volume migration from other classes or time periods, the definition of short-run excess capacity, eligibility for the program, contribution level for Standard Mail flats, and documentation of cost and revenue estimates. *See* CHIR No. 1. The Commission expects the Postal Service to provide this level of detail in future initial filings.

The Postal Service defines the primary measure of success for the Summer Sale program as "incremental revenue and volume growth over the threshold for the universe of eligible participants[.]" *See* Response of the United States Postal Service to Chairman's Information Request No. 1, May 15, 2009, at 2 (Response to CHIR No. 1).⁶ The Postal Service also anticipates monitoring customer feedback and the efficacy and efficiency of its administration of the program. *Id.*

The Postal Service does not believe the additional incentive of the Summer Sale program will induce any First-Class advertising mail to migrate to the program, due to different demand characteristics and the significant gap in price which already exists. *Id.* at 4. Further, the Postal Service does not believe that mailers have enough lead time to shift volume from June or earlier into the program. *Id.* In addition, the Postal Service cites precautions it has

¹ United States Postal Service Notice of Market-Dominant Price Adjustment, May 1, 2009 (Notice).

² PRC Order No. 209, Notice and Order Concerning Standard Mail Volume Incentive Pricing Program, May 4, 2009; located at 74 FR 21837 (May 11, 2009).

³ Much of the justification for the proposal was submitted in response to Chairman's Information Request No. 1, May 8, 2009 (CHIR No. 1). Any such future proposals must be accompanied by the requisite financial (cost, revenue, and volume) data underlying them.

⁴ The threshold is calculated by comparing average volumes over distinct periods to determine a trend in the mailer's volume. That trend is applied to the average expected mail volume over the Summer Sale program months, and any volume above the trend adjusted average is eligible for the discount.

⁵ To quantify this possibility, the Postal Service will measure each mailer's October 2009 volumes using a trend analysis based on the mailer's prior years' volumes for that month. *Id.* at 4.

⁶ The pages to the Postal Service's response to CHIR No. 1 are not numbered. For the convenience of the parties, the Commission has numbered the pages for purposes of citation. If the normal citation practice was followed (citing just the relevant question being answered), parties may have difficulty in finding the specific reference as some of the responses are lengthy.