

**POSTAL REGULATORY COMMISSION****39 CFR Part 3020**

[Docket Nos. MC2009–28 and CP2009–38; Order No. 232]

**Priority Mail Contract**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adding a new postal product 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 July 29, 2009 and is applicable beginning July 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–7890–6824 or [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY HISTORY:** *Regulatory History*, 74 FR 30333 (June 25, 2009).

I. Background

II. Comments

III. Commission Analysis

IV. Ordering Paragraphs

**I. Background**

The Postal Service seeks to add a new product identified as Priority Mail Contract 12 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On June 11, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, announcing that it has entered into an additional contract (Priority Mail Contract 12), which it attempts to classify within the previously proposed Priority Mail Contract Group product.<sup>1</sup> In support, the Postal Service filed the proposed contract and referenced Governors' Decision 09–6 filed in Docket No. MC2009–25. *Id.* at 1. The Notice has been assigned Docket No. CP2009–38.

In response to Order No. 223,<sup>2</sup> and in accordance with 39 U.S.C. 3642 and 39 CFR 3020 subpart B, the Postal Service filed a formal request to add Priority Mail Contract 12 to the Competitive Product List as a separate product.<sup>3</sup> The Postal Service asserts that the Priority

Mail Contract 12 product 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. MC2009–28.

In support of its Notice and Request, the Postal Service filed the following materials: (1) 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 the day that the Commission issues all regulatory approvals;<sup>4</sup> (2) requested changes in the Mail Classification Schedule product list;<sup>5</sup> (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>6</sup> and (4) certification of compliance with 39 U.S.C. 3633(a).<sup>7</sup>

In the Statement of Supporting Justification, Mary Prince Anderson, Acting 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 B, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). Notice, Attachment B.

The Postal Service filed much of the supporting materials, including the unredacted contract, under seal. In its Notice, 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 confidential. Notice at 2–3.

In Order No. 223, the Commission gave notice of the two dockets, requested supplemental information, appointed a public representative, and provided the public with an opportunity to comment.<sup>8</sup> On June 22, 2009, Chairman's Information Request No. 1 was filed.<sup>9</sup> On June 23, 2009, the Postal Service filed the supplemental information requested.<sup>10</sup> The Postal Service filed its response to the

Chairman's Information Request on June 26, 2009.<sup>11</sup>

**II. Comments**

Comments were filed by the Public Representative.<sup>12</sup> No comments were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Priority Mail Contract 12 agreement comports with the requirements of title 39 and is appropriately classified as competitive. *Id.* at 3.

The Public Representative believes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. He indicates that the contractual provisions are mutually beneficial to the parties and general public. *Id.* at 4.

**III. Commission Analysis**

The Commission has reviewed the Notice, the Request, the contract, the financial analysis provided under seal that accompanies it, the Postal Service's responses to Chairman's Information Request No. 1, the Postal Service's response to the Commission's request for supplemental information, and the comments filed by the Public Representative.

*Statutory requirements.* The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 12 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 Priority Mail Contract 12 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.

<sup>11</sup> Response to Chairman's Information Request No. 1, Question 2 and Notice of Filing Responses to Questions 1 and 3 Under Seal, June 26, 2009.

<sup>12</sup> Public Representative Comments in Response to United States Postal Service Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 12), June 26, 2009 (Public Representative Comments).

<sup>4</sup> Attachment A to the Notice.

<sup>5</sup> Attachment A to the Request.

<sup>6</sup> Attachment B to the Request.

<sup>7</sup> Attachment B to the Notice.

<sup>8</sup> Order No. 223 at 1–4.

<sup>9</sup> Chairman's Information Request No. 1 and Notice of Filing of Question Under Seal, June 22, 2009. A portion of the Chairman's Information Request was filed under seal.

<sup>10</sup> Response of the United States Postal Service to Commission's Request for Supplemental Information in Order No. 223, June 23, 2009.

<sup>1</sup> Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 12), June 11, 2009 (Notice).

<sup>2</sup> PRC Order No. 223, Notice and Order Concerning Filing of Priority Mail Contract 12 Negotiated Service Agreement, June 17, 2009 (Order No. 223).

<sup>3</sup> Request of the United States Postal Service to Add Priority Mail Contract 12 to Competitive Product List, June 23, 2009 (Request).

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 B, para. (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 para. (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 para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 12 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 12 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 Priority Mail Contract 12 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. Order No. 223 and Chairman's Information Request No. 1 sought additional support and justification for particular cost saving elements. The Postal Service's responses did not persuade the Commission that certain cost savings elements were appropriate here.

Accordingly, the Commission's analysis of the proposed contract is based on alternative cost estimates of certain mail functions. The Commission

employed this analysis to determine whether changed cost inputs would materially affect the contract's financial analysis.<sup>13</sup> The Commission concludes that the changed inputs do not have a material effect on the underlying financial analysis of the contract.

Based on the data submitted and the Commission's alternative analysis, the Commission finds that Priority Mail Contract 12 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 Priority Mail Contract 12 indicates that it comports with the provisions applicable to rates for competitive products.

The electronic files submitted in support of the Notice did not include all supporting data. As noted in Order No. 231, Docket Nos. MC2009–27 and CP2009–37, issued concurrently today, future requests must provide all electronic files showing calculations in support of the financial models associated with the request. A failure to provide such information may delay resolution of requests in the future.

**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 Priority Mail Contract 12 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. Priority Mail Contract 12 (MC2009–28 and CP2009–38) 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 the termination date occurs prior to that date, as discussed in this order.

<sup>13</sup> The Commission's analysis is set forth in Library Reference PRC–CP2009–38–NP–LR–1, which, because it contains confidential information, is being filed under seal.

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.

Issued: July 1, 2009.

By the Commission.

**Judith M. Grady,**  
*Acting 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 Schedule 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 (NFMs)/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



Global Plus 2 (MC2008-7, CP2008-16 and CP2008-17)  
 Inbound International  
 Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6, CP2008-14 and CP2008-15)  
 International Business Reply Service Competitive Contract 1 (MC2009-14 and CP2009-20)  
 Competitive Product Descriptions  
 Express Mail  
 [Reserved for Group Description]  
 Express Mail  
 [Reserved for Product Description]  
 Outbound International Expedited Services  
 [Reserved for Product Description]  
 Inbound International Expedited Services  
 [Reserved for Product Description]  
 Priority  
 [Reserved for Product Description]  
 Priority Mail  
 [Reserved for Product Description]  
 Outbound Priority Mail International  
 [Reserved for Product Description]  
 Inbound Air Parcel Post  
 [Reserved for Product Description]  
 Parcel Select  
 [Reserved for Group Description]  
 Parcel Return Service  
 [Reserved for Group Description]  
 International  
 [Reserved for Group Description]  
 International Priority Airlift (IPA)  
 [Reserved for Product Description]  
 International Surface Airlift (ISAL)  
 [Reserved for Product Description]  
 International Direct Sacks—M—Bags  
 [Reserved for Product Description]  
 Global Customized Shipping Services  
 [Reserved for Product Description]  
 International Money Transfer Service  
 [Reserved for Product Description]  
 Inbound Surface Parcel Post (at non-UPU rates)  
 [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]  
 International Insurance  
 [Reserved for Product Description]  
 Negotiated Service Agreements  
 [Reserved for Group Description]  
 Domestic  
 [Reserved for Product Description]  
 Outbound International  
 [Reserved for Group Description]  
 Part C—Glossary of Terms and Conditions  
 [Reserved]  
 Part D—Country Price Lists for International Mail [Reserved]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL-8933-5]

#### Approval and Promulgation of Air Quality Implementation Plans; Iowa; Update to Materials Incorporated by Reference

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; notice of administrative change.

**SUMMARY:** EPA is updating the materials submitted by Iowa that are incorporated by reference (IBR) into the State implementation plan (SIP). The regulations affected by this update have been previously submitted by the State agency and approved by EPA. This update affects the SIP materials that are available for public inspection at the National Archives and Records Administration (NARA), the Air and Radiation Docket and Information Center located at EPA Headquarters in Washington, DC, and the Regional Office.

**DATES:** *Effective Date:* This action is effective July 29, 2009.

**ADDRESSES:** SIP materials which are incorporated by reference into 40 CFR part 52 are available for inspection at the following locations: Environmental Protection Agency, Region 7, 901 North 5th Street, Kansas City, Kansas 66101; or at <http://www.epa.gov/region07/programs/artd/air/rules/fedapprv.htm>; the Air and Radiation Docket and Information Center, EPA Headquarters Library, Room Number 3334, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20460, and the National Archives and Records Administration. If you wish to obtain materials from a docket in the EPA Headquarters Library, please call the Office of Air and Radiation Docket at (202) 566-1742. For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

**FOR FURTHER INFORMATION CONTACT:** Evelyn VanGoethem at (913) 551-7659, or by e-mail at [vangoethem.evelyn@epa.gov](mailto:vangoethem.evelyn@epa.gov).

**SUPPLEMENTARY INFORMATION:** The SIP is a living document which the State revises as necessary to address the unique air pollution problems in the State. Therefore, EPA from time to time must take action on SIP revisions

containing new and/or revised regulations to make them part of the SIP. On May 22, 1997 (62 FR 27968), EPA revised the procedures for incorporating by reference Federally approved SIPs, as a result of consultations between EPA and the Office of the Federal Register. The description of the revised SIP document, IBR procedures and “Identification of plan” format are discussed in further detail in the May 22, 1997, **Federal Register** document.

On February 12, 1999, EPA published a document in the **Federal Register** (64 FR 7091) beginning the new IBR procedure for Iowa. On September 23, 2004 (69 FR 56942), EPA published an update to the IBR material for Iowa.

In this document, EPA is doing the following:

1. Announcing the update to the IBR material as of July 1, 2009.

2. Correcting the date format in the “State effective date” or “State Submittal date” and “EPA approval date” columns in § 52.820 paragraphs (c), (d) and (e). Dates are numerical month/day/year without additional zeros.

3. Modifying the **Federal Register** citation in § 52.820 paragraphs (c), (d) and (e) to reflect the beginning page of the preamble as opposed to the page number of the regulatory text.

4. Removing the second entry for 567-22.4 in § 52.820 paragraph (c) under Chapter 22.

EPA has determined that today’s rule falls under the “good cause” exemption in section 553(b)(3)(B) of the Administrative Procedures Act (APA) which, upon finding “good cause,” authorizes agencies to dispense with public participation and section 553(d)(3), which allows an agency to make a rule effective immediately (thereby avoiding the 30-day delayed effective date otherwise provided for in the APA). Today’s rule simply codifies provisions which are already in effect as a matter of law in Federal and approved State programs. Under section 553 of the APA, an agency may find good cause where procedures are “impractical, unnecessary, or contrary to the public interest.” Public comment is “unnecessary” and “contrary to the public interest” since the codification only reflects existing law. Immediate notice in the CFR benefits the public by providing notice of the updated Iowa SIP compilation.

#### Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable