

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. CP2009–45 and MC2009–34; Order No. 258]

Express Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail Contract 4 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 under the law.

DATES: Effective August 12, 2009 and applicable beginning July 27, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 33483 (July 13, 2009.)

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I. Introduction

The Postal Service seeks to add a new product identified as Express Mail Contract 4 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On July 6, 2009, 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 4 to the Competitive Product List.¹ On July 14, 2009, the Postal Service filed a notice of correction to the caption of the July 6, 2009 Request.² The Postal Service asserts that the Express Mail Contract 4 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009–34.

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. *Id.* The contract has been assigned Docket No. CP2009–45.

On July 8, 2009, the Postal Service filed under seal revised versions of the financial analysis workbooks originally filed under seal on July 6, 2009.³

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors’ Decision authorizing the new product which also includes an analysis of Express Mail Contract 4 and certification of the Governors’ vote;⁴ (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;⁵ (3) requested changes in the Mail classification Schedule product list;⁶ (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁷ and (5) certification of compliance with 39 U.S.C. 3633(a).⁸

In the Statement of Supporting Justification, Mary Prince Anderson, 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 institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. *Id.*, Attachment D. Thus, Ms. Anderson contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies 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 unredacted Governors’ Decision and the unredacted contract, 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 confidential. *Id.* at 2–3.

In Order No. 242, the Commission gave notice of the two dockets,

appointed a public representative, and provided the public with an opportunity to comment.⁹

III. Information Request

On July 13, 2009, the Chairman issued an information request seeking responses to two questions.¹⁰ The information request was filed under seal. *Id.* On July 20, 2009, the Postal Service filed its responses to CHIR No. 1.¹¹

IV. Comments

Comments were filed by the Public Representative.¹² No filings were submitted by other interested parties. The Public Representative states that the Postal Service’s filing complies with applicable Commission rules of practice and concludes that the Express Mail Contract 4 agreements comports with the requirements of title 39. *Id.* at 2–4; and 5. She further states that the agreement appears beneficial to the general public. *Id.* at 4–5.

The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 4. She also points out several contractual provisions that she believes are mutually beneficial to the parties and general public. *Id.* at 4–5. Finally, the Public Representative observes that although the analysis accompanying the Request shows some risk of not meeting expected cost coverage, the Postal Service appears confident that any such risk is manageable and that it expects that overall the contract will “generate significant contribution.” *Id.* at 5.

V. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the Revised Workbooks, the Response to CHIR No. 1, and the comments filed by the Public Representative.

Statutory requirements. The Commission’s statutory responsibilities in this instance entail assigning Express Mail Contract 4 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C.

⁹ PRC Order No. 242, Notice and Order Concerning Express Mail Contract 4 Negotiated Service Agreement, July 7, 2009 (Order No. 242).

¹⁰ Chairman’s Information Request No. 1 and Notice of Filing of Questions under Seal, July 13, 2009 (CHIR No. 1).

¹¹ *See* Notice of the United States Postal Service of Filing Response to Chairman’s Information Request No. 1 Under Seal, July 20, 2009 (Response to CHIR No. 1).

¹² Public Representative Comments in Response to Notice and Order Concerning Express Mail Contract 4 Negotiated Service Agreement, July 15, 2009 (Public Representative Comments).

¹ Request of the United States Postal Service to Add Express Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 6, 2009 (Request).

² Notice of the United States Postal Service Filing of Corrected Caption to First Page of Request and Notice, July 14, 2009.

³ *See* Notice of the United States Postal Service of Filing Under Seal of Revised Financial Analysis Workbooks for Express Mail Contract 4, July 8, 2009 (Revised Workbooks).

⁴ 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.

⁵ Attachment B to the Request.

⁶ Attachment C to the Request.

⁷ Attachment D to the Request.

⁸ Attachment E to the Request.

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 4 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 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 D, at ¶ (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 ¶ (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 ¶ (h).

No commenter opposes the proposed classification of Express Mail Contract 4 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 4 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 Express Mail Contract 4 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.

Based on the data submitted, the Commission finds that Express Mail Contract 4 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 4 indicates that it comports with the provisions applicable to rates for competitive products.

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 Express Mail Contract 4 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.

VI. Ordering Paragraphs

It is ordered:

1. Express Mail Contract 4 (MC2009–34 and CP2009–45) 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 termination occurs prior to that date, 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.

Issued: July 27, 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 (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

Inbound International

Canada Post—United States Postal Service

Contractual Bilateral Agreement for

Inbound Market Dominant Services

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] | [Reserved for Product Description] | Canada Post—United States Postal service |
| Parcels | Signature Confirmation | Contractual Bilateral Agreement for |
| [Reserved for Product Description] | [Reserved for Product Description] | Inbound Competitive Services (MC2009– |
| Outbound Single-Piece First-Class Mail | Special Handling | 8 and CP2009–9) |
| International | [Reserved for Product Description] | International Money Transfer Service |
| [Reserved for Product Description] | Stamped Envelopes | International Ancillary Services |
| Inbound Single-Piece First-Class Mail | [Reserved for Product Description] | Special Services |
| International | Stamped Cards | Premium Forwarding Service |
| [Reserved for Product Description] | [Reserved for Product Description] | Negotiated Service Agreements |
| Standard Mail (Regular and Nonprofit) | Premium Stamped Stationery | Domestic |
| [Reserved for Class Description] | [Reserved for Product Description] | Express Mail Contract 1 (MC2008–5) |
| High Density and Saturation Letters | Premium Stamped Cards | Express Mail Contract 2 (MC2009–3 and |
| [Reserved for Product Description] | [Reserved for Product Description] | CP2009–4) |
| High Density and Saturation Flats/Parcels | International Ancillary Services | Express Mail Contract 3 (MC2009–15 and |
| [Reserved for Product Description] | [Reserved for Product Description] | CP2009–21) |
| Carrier Route | International Certificate of Mailing | Express Mail Contract 4 (MC2009–34 and |
| [Reserved for Product Description] | [Reserved for Product Description] | CP2009–45) |
| Letters | International Registered Mail | Express Mail & Priority Mail Contract 1 |
| [Reserved for Product Description] | [Reserved for Product Description] | (MC2009–6 and CP2009–7) |
| Flats | International Return Receipt | Express Mail & Priority Mail Contract 2 |
| [Reserved for Product Description] | [Reserved for Product Description] | (MC2009–12 and CP2009–14) |
| Not Flat-Machinables (NFM)s/Parcels | International Restricted Delivery | Express Mail & Priority Mail Contract 3 |
| [Reserved for Product Description] | [Reserved for Product Description] | (MC2009–13 and CP2009–17) |
| Periodicals | Address List Services | Express Mail & Priority Mail Contract 4 |
| [Reserved for Class Description] | [Reserved for Product Description] | (MC2009–17 and CP2009–24) |
| Within County Periodicals | Caller Service | Express Mail & Priority Mail Contract 5 |
| [Reserved for Product Description] | [Reserved for Product Description] | (MC2009–18 and CP2009–25) |
| Outside County Periodicals | Change-of-Address Credit Card | Express Mail & Priority Mail Contract 6 |
| [Reserved for Product Description] | Authentication | (MC2009–31 and CP2009–42) |
| Package Services | [Reserved for Product Description] | Express Mail & Priority Mail Contract 7 |
| [Reserved for Class Description] | Confirm | (MC2009–32 and CP2009–43) |
| Single-Piece Parcel Post | [Reserved for Product Description] | Express Mail & Priority Mail Contract 8 |
| [Reserved for Product Description] | International Reply Coupon Service | (MC2009–33 and CP2009–44) |
| Inbound Surface Parcel Post (at UPU rates) | [Reserved for Product Description] | Parcel Return Service Contract 1 (MC2009– |
| [Reserved for Product Description] | International Business Reply Mail Service | 1 and CP2009–2) |
| Bound Printed Matter Flats | [Reserved for Product Description] | Priority Mail Contract 1 (MC2008–8 and |
| [Reserved for Product Description] | Money Orders | CP2008–26) |
| Bound Printed Matter Parcels | [Reserved for Product Description] | Priority Mail Contract 2 (MC2009–2 and |
| [Reserved for Product Description] | Post Office Box Service | CP2009–3) |
| Media Mail/Library Mail | [Reserved for Product Description] | Priority Mail Contract 3 (MC2009–4 and |
| [Reserved for Product Description] | Negotiated Service Agreements | CP2009–5) |
| Special Services | [Reserved for Class Description] | Priority Mail Contract 4 (MC2009–5 and |
| [Reserved for Class Description] | HSBC North America Holdings Inc. | CP2009–6) |
| Ancillary Services | Negotiated Service Agreement | Priority Mail Contract 5 (MC2009–21 and |
| [Reserved for Product Description] | [Reserved for Product Description] | CP2009–26) |
| Address Correction Service | Bookspan Negotiated Service Agreement | Priority Mail Contract 6 (MC2009–25 and |
| [Reserved for Product Description] | [Reserved for Product Description] | CP2009–30) |
| Applications and Mailing Permits | Bank of America Corporation Negotiated | Priority Mail Contract 7 (MC2009–25 and |
| [Reserved for Product Description] | Service Agreement | CP2009–31) |
| Business Reply Mail | The Bradford Group Negotiated Service | Priority Mail Contract 8 (MC2009–25 and |
| [Reserved for Product Description] | Agreement | CP2009–32) |
| Bulk Parcel Return Service | Part B—Competitive Products | Priority Mail Contract 9 (MC2009–25 and |
| [Reserved for Product Description] | 2000 Competitive Product List | CP2009–33) |
| Certified Mail | Express Mail | Priority Mail Contract 10 (MC2009–25 and |
| [Reserved for Product Description] | Express Mail | CP2009–34) |
| Certificate of Mailing | Outbound International Expedited Services | Priority Mail Contract 11 (MC2009–27 and |
| [Reserved for Product Description] | Inbound International Expedited Services | CP2009–37) |
| Collect on Delivery | Inbound International Expedited Services 1 | Priority Mail Contract 12 (MC2009–28 and |
| [Reserved for Product Description] | (CP2008–7) | CP2009–38) |
| Delivery Confirmation | Inbound International Expedited Services 2 | Priority Mail Contract 13 (MC2009–29 and |
| [Reserved for Product Description] | (MC2009–10 and CP2009–12) | CP2009–39) |
| Insurance | Priority Mail | Priority Mail Contract 14 (MC2009–30 and |
| [Reserved for Product Description] | Priority Mail | CP2009–40) |
| Merchandise Return Service | Outbound Priority Mail International | Outbound International |
| [Reserved for Product Description] | Inbound Air Parcel Post | Global Direct Contracts (MC2009–9, |
| Parcel Airlift (PAL) | Royal Mail Group Inbound Air Parcel Post | CP2009–10, and CP2009–11) |
| [Reserved for Product Description] | Agreement | Global Expedited Package Services (GEPS) |
| Registered Mail | Parcel Select | Contracts |
| [Reserved for Product Description] | Parcel Return Service | GEPS 1 (CP2008–5, CP2008–11, CP2008– |
| Return Receipt | International | 12, and CP2008–13, CP2008–18, |
| [Reserved for Product Description] | International Priority Airlift (IPA) | CP2008–19, CP2008–20, CP2008–21, |
| Return Receipt for Merchandise | International Surface Airlift (ISAL) | CP2008–22, CP2008–23, and CP2008–24) |
| [Reserved for Product Description] | International Direct Sacks—M—Bags | Global Plus Contracts |
| Restricted Delivery | Global Customized Shipping Services | Global Plus 1 (CP2008–9 and CP2008–10) |
| [Reserved for Product Description] | Inbound Surface Parcel Post (at non-UPU | Global Plus 2 (MC2008–7, CP2008–16 and |
| Shipper-Paid Forwarding | rates) | CP2008–17) |

| | | |
|--|---|---|
| Inbound International | [Reserved for Product Description] | [Reserved for Product Description] |
| Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15) | Parcel Select | International Registered Mail |
| International Business Reply Service | [Reserved for Group Description] | [Reserved for Product Description] |
| Competitive Contract 1 (MC2009–14 and CP2009–20) | Parcel Return Service | International Return Receipt |
| Competitive Product Descriptions | [Reserved for Group Description] | [Reserved for Product Description] |
| Express Mail | International | International Restricted Delivery |
| [Reserved for Group Description] | [Reserved for Group Description] | [Reserved for Product Description] |
| Express Mail | International Priority Airlift (IPA) | International Insurance |
| [Reserved for Product Description] | [Reserved for Product Description] | [Reserved for Product Description] |
| Outbound International Expedited Services | International Surface Airlift (ISAL) | Negotiated Service Agreements |
| [Reserved for Product Description] | [Reserved for Product Description] | [Reserved for Group Description] |
| Inbound International Expedited Services | International Direct Sacks—M—Bags | Domestic |
| [Reserved for Product Description] | [Reserved for Product Description] | [Reserved for Product Description] |
| Priority | Global Customized Shipping Services | Outbound International |
| [Reserved for Product Description] | [Reserved for Product Description] | [Reserved for Group Description] |
| Priority Mail | International Money Transfer Service | |
| [Reserved for Product Description] | [Reserved for Product Description] | Part C—Glossary of Terms and Conditions |
| Outbound Priority Mail International | Inbound Surface Parcel Post (at non-UPU rates) | [Reserved] |
| [Reserved for Product Description] | [Reserved for Product Description] | Part D—Country Price Lists for International Mail [Reserved] |
| Inbound Air Parcel Post | International Ancillary Services | [FR Doc. E9–19342 Filed 8–11–09; 8:45 am] |
| | [Reserved for Product Description] | BILLING CODE 7710–FW–P |
| | International Certificate of Mailing | |