

transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port San Diego or his designated representative.

(2) Mariners desiring to enter or operate in the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

(3) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel must proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: July 30, 2009.

**DL LeBlanc,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Sector San Diego.*

[FR Doc. E9-21023 Filed 9-1-09; 8:45 am]

**BILLING CODE 4910-15-P**

## POSTAL SERVICE

### 39 CFR Part 111

#### First-Class Mail Incentive Program

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®), to add section 709.3 which introduces new standards for a special volume incentive program for mailers of commercial (automation and/or Presort) First-Class Mail® cards, letters and/or flats with mail volume exceeding their individual USPS®-determined threshold levels. The program period will be from October 1, 2009 through December 31, 2009.

**DATES:** *Effective Date:* October 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Nii-Kwashie Aryeetey at 202-268-7442 or Kevin Gunther at 202-268-7208.

**SUPPLEMENTARY INFORMATION:** The Postal Service is implementing a volume incentive program for qualified mailers of commercial (automation and/or Presort) First-Class Mail cards, letters and/or flats, for volume mailed during the program period, above their USPS-determined threshold level.

To participate, mailers must be the permit holder (i.e., owner) of a permit imprint advance deposit account(s) or

the owner of qualifying mail volume entered through the permit imprint advance deposit account of a mail service provider. Qualifying mail owners must be able to demonstrate volume of at least five-hundred thousand (500,000) commercial First-Class Mail cards, letters and/or flats pieces within the period of October 1, 2007 to December 31, 2007 and five-hundred thousand (500,000) commercial First-Class Mail cards, letters and/or flats pieces within the period of October 1, 2008 to December 31, 2008, for a permit imprint advance deposit account(s), precanceled stamp permit(s), postage meter permit(s), or by a combination of these methods. Applicants may also qualify for the program with volume mailed through an account(s) owned by a mail service provider, when adequate documentation is provided that specifies the applicant is the owner of the mail. Those mail owners eligible to participate in the program will be notified of their eligibility, in writing, on or before October 15, 2009. Mail owners wishing to participate in the program, who believe they meet the eligibility standards under DMM 709.3.2 and were not notified by letter, may request a review of their eligibility by contacting the USPS at [firstclassmailincentive@usps.gov](mailto:firstclassmailincentive@usps.gov).

As part of the application process, participating mail owners will be required to provide historical data demonstrating their commercial First-Class Mail cards, letters and/or flats volumes mailed within the periods of October 1, 2007 through December 31, 2007, October 1, 2008 through December 31, 2008, September 2008, and January 2009.

Participating mail owners demonstrating commercial First-Class Mail cards, letters or flats volume above their established threshold level will receive a credit following the close of the program period. Thresholds will be calculated independently for each applicant, by comparing the volume of commercial First-Class Mail cards, letters and/or flats mailed within the period from October 1, 2007 through December 31, 2007 to the volume mailed within the period of October 1, 2008 through December 31, 2008. The change in recorded volume between these two periods will represent the applicant's volume trend. Trends that show growth for the period of October 1, 2008 to December 31, 2008, versus that shown in the same period of the prior year, will appear as a ratio above 1.0 (expressed here in a decimal format). Trends that show a volume decline for the period of October 1, 2008 to

December 31, 2008 will appear as a ratio below 1.0. The applicable ratio will then be applied to the volume of commercial First-Class Mail cards, letters and flats mailed within the period of October 1, 2008 to December 31, 2008. This result represents the USPS-determined threshold level for an individual applicant.

Mail owners (applicants) are eligible to participate in the program with qualifying volume prepared by a mail service provider when entered through a permit owned by the applicant. Mail volume through a mail service provider's permit, may also qualify for the program, but only if adequate documentation identifies the mail as being prepared on behalf of the applicant and demonstrates the applicant's prior mailing activity. Mail service providers are not eligible to participate in the First-Class Mail Incentive program.

Approved program participants, demonstrating an increase in their total commercial First-Class Mail cards, letters and/or flats volume above their approved threshold level will qualify for a credit to a designated permit imprint advance account, Centralized Account Payment System (CAPS) account or paid through another approved method. The total postage attributable to commercial First-Class Mail cards, letters and flats within the program period will be identified for each participant and divided by the total number of recorded pieces, to generate the average price per piece. Participants receive a credit in the amount of 20 percent of the average price per piece for the total number of mailpieces of the incremental volume above their approved threshold level as recorded during the program period.

The First-Class Mail Incentive program encourages mailers to generate new mail volume. As a deterrent to mailers shifting previously planned volume into the program to obtain incentive credits, the mailing activity of participating mail owners will be monitored in the calendar months prior to and following the end of the program as follows:

- The participant's previously determined volume trend will be applied to their volume of commercial First-Class Mail cards, letters and flats mailed within the month of September 2008 and January 2009, to determine the participant's September 2009 and January 2010 expected volume.

- Each participant's *actual* September 2009 and January 2010 volume will then be compared to their respective September 2009 and January 2010 expected volume.

- Participants failing to meet (or exceed) either of their expected volume thresholds will have any demonstrated shortfall in volume deducted from the number of mailpieces eligible for an incentive credit within the program.

- Participants demonstrating a shortfall in volume to either their September 2009 or January 2010 expected volumes will have that shortfall deducted from the number of mailpieces eligible for an incentive credit within the program regardless of any surplus demonstrated in the expected volume threshold of the other month.

Additionally, as part of the program administration, the Postal Service will require each program participant to certify the data used to calculate the volume trends, threshold levels and their September 2009 and January 2010 expected volumes. This certification requirement will be similar to what is currently used on PS Form 3600, *Postage Statement—First-Class Mail and Priority Mail*. The certification requirement for this initiative is aimed at ensuring that the data used by the Postal Service to calculate the applicable volume trend, threshold level and September 2009 and January 2010 expected volume for each qualifying mailer is accurate.

In accordance with the Postal Accountability and Enhancement Act, on August 11, 2009, the Postal Service filed a Notice with the Postal Regulatory Commission (PRC) regarding the First-Class Mail Incentive program. Regulatory review will take 45 days from that date.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)*, incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

#### List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR part 111 is amended as follows:

#### PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633 and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)* as follows:

#### Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

\* \* \* \* \*

#### 700 Special Standards

\* \* \* \* \*

#### 709 Experimental and Temporary Classifications

\* \* \* \* \*

*[Add a new section 709.3.0 to introduce new standards for a volume incentive program for commercial First-Class Mail cards, letters and flats as follows:]*

#### 3.0 First-Class Mail Incentive Program

##### 3.1 Program Description

The First-Class Mail Incentive program provides volume pricing for qualified mail owners of commercial (automation and/or Presort) First-Class Mail cards, letters and/or flats who are able to document mail volume exceeding their individual USPS-determined threshold level during the October 1, 2009 through December 31, 2009 program period. Participating mail owners documenting volumes above their established threshold level will receive a 20% credit, for each piece exceeding their individual USPS-determined threshold level, to a designated permit imprint advance deposit account, Centralized Account Payment System (CAPS) account, or provided through another approved method at the conclusion of the program period. Program participants must review and certify the accuracy of the data used by the USPS to calculate their individual volume trend, threshold level and their September 2009 and January 2010 expected volumes.

##### 3.2 Eligibility Standards

Mail owners are considered eligible for the program as follows:

a. Applicants must be able to document, in aggregate, volume of at least five-hundred thousand (500,000) pieces of commercial First-Class Mail cards, letters and/or flats for each of the October 1, 2007 to December 31, 2007 and October 1, 2008 to December 31, 2008 time periods as follows:

1. Volume through one or more permit imprint advance deposit accounts, precanceled stamp permits, or postage meter permits owned by the applicant, or

2. Volume prepared by a mail service provider when entered through a permit owned by the applicant, or

3. Volume within a mail service provider's permit, which can be identified as being prepared on behalf of the applicant.

b. Mail service providers are not eligible to participate in this program.

#### 3.3 Program Threshold Level

Threshold level figures will be calculated independently for each applicant as follows:

a. Total documented volume of commercial First-Class Mail cards, letters and/or flats recorded within the period from October 1, 2007 to December 31, 2007 will be compared to that recorded within the period of October 1, 2008 to December 31, 2008.

b. The change in recorded mailing volume between these two periods will represent the applicant's volume trend. Trends that show growth for the period of October 1, 2008 to December 31, 2008, versus that shown in the same period of the prior year, will appear as a ratio above 1.0 (expressed here in a decimal format). A volume decline from October 1, 2008 to December 31, 2008 will appear as a ratio below 1.0.

c. The applicable ratio will then be applied to the volume of commercial First-Class Mail cards, letters and flats, for all of the applicant's mailings, or other qualifying volume recorded through the permit of a mail service provider (MSP), mailed during the period from October 1, 2008 through December 31, 2008.

d. The product of the calculation in 3.2c will represent the USPS-determined threshold level for the selected applicant.

#### 3.4 Application

Mail owners meeting the eligibility criteria will be notified of their eligibility for the program and advised of the application process and requirements. Mail owners interested in participating may apply at [www.usps.com/firstclassmailincentive](http://www.usps.com/firstclassmailincentive). Eligible applicants must apply for the program no later than November 1, 2009. Mailers meeting the eligibility standards under 709.3.2, and not notified by letter, may request a review of their eligibility by contacting the USPS via email at [firstclassmailincentive@usps.gov](mailto:firstclassmailincentive@usps.gov). Mail owners requesting review of their program eligibility must submit their request to the USPS no later than November 1, 2009. Following registration, mailers will be required to provide historical data demonstrating their commercial First-Class Mail cards, letters and/or flats volumes mailed within each of the periods of October 1, 2007 to December 31, 2007, October 1, 2008 to December 31, 2008, September 2008 and January 2009. The USPS will review the data provided and applicants will be notified of their approval for

participation in the program, their approved threshold level, and their revised threshold level (when applicable). Mailers wishing to dispute their threshold level will be provided with instructions on the process.

### 3.5 Program Participation

Mail owners may participate in the program with qualifying volume as follows:

a. Commercial First-Class Mail cards, letters and/or flats volume mailed by the participant through the participant's own permit imprint advance account, precanceled stamp permit(s), or postage meter permit(s);

b. Commercial First-Class Mail cards, letters and/or flats volume prepared by a mail service provider, when entered through a permit owned by the participant;

c. Commercial First-Class Mail cards, letters and/or flats pieces mailed through a mail service provider's permit, only when the pieces can be identified as being prepared for the participant and when the applicant's prior mailing activity through the mail service provider's permit can be validated.

### 3.6 Incentive Program Credits

Approved participants demonstrating an increase in commercial First-Class Mail cards, letters and flats volume above their approved threshold level qualify for a credit to their designated permit imprint advance deposit account, Centralized Account Payment System (CAPS) account, or provided through another approved method as follows:

a. The total postage paid for commercial First-Class Mail cards, letters and flats recorded during the program will be identified for each participant.

b. The total postage paid during the program period will be divided by the total number of recorded pieces to generate the average price per piece for the program period.

c. Participants will receive a credit in the amount of 20 percent of the average price per piece applied to the total number of mailpieces, for the incremental volume above their approved threshold level, recorded during the program period.

### 3.7 Mailing Activity Review

Mailing activity by participants will be reviewed in the calendar months preceding and following the end of the program. The qualifying volume recorded for participants may be adjusted in accordance with the following:

a. The participant's previously determined volume trend will be applied to the volume of commercial First-Class Mail cards, letters and flats mailed by the participant within the months of September 2008 and January 2009, to determine the program participant's September 2009 and January 2010 expected volumes.

b. The participant's actual September 2009 and January 2010 volumes will then be compared to their September 2009 and January 2010 expected volumes.

c. Participants failing to meet their September 2009 and/or January 2010 expected volume will have any shortfall in volume deducted from the number of mailpieces eligible for an incentive credit within the program.

d. Participants demonstrating a shortfall in volume to either their September 2009 or January 2010 expected volumes will have that shortfall deducted from the number of mailpieces eligible for an incentive credit within the program regardless of any surplus demonstrated in the expected volume threshold of the other month.

\* \* \* \* \*

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E9-21072 Filed 9-1-09; 8:45 am]

BILLING CODE 7710-12-P

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

[Docket Nos. MC2009-37 and CP2009-56; Order No. 278]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adding the Priority Mail Contract 17 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 September 2, 2009 and is applicable beginning August 14, 2009.

### FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, at 202-789-6820 or [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 74 FR 39123 (August 5, 2009).

I. Introduction  
II. Background

III. Comments

IV. Commission Analysis

V. Ordering Paragraphs

## I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 17 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

## II. Background

On July 24, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 17 to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Priority Mail Contract 17 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. MC2009-37.

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. CP2009-56.

In support of its 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>2</sup> (2) requested changes in the Mail Classification Schedule product list;<sup>3</sup> (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>4</sup> and (4) certification of compliance with 39 U.S.C. 3633(a).<sup>5</sup> The Postal Service also references Governors' Decision 09-6, filed in Docket No. MC2009-25, as authorization of the new product. Notice at 1.

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 C, at 1. W. Ashley

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 17 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

<sup>2</sup> Attachment A to the Request.

<sup>3</sup> Attachment B to the Request.

<sup>4</sup> Attachment C to the Request.

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