

Vessel openings will be provided each day from 8 a.m. to 5 p.m. on February 5, 2009, and from April 1 to April 3, 2009, if at least two hours' notice is given.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: January 21, 2009.

**Waverly W. Gregory, Jr.,**

*Chief, Bridge Administration Branch, Fifth Coast Guard District.*

[FR Doc. E9-2498 Filed 2-5-09; 8:45 am]

BILLING CODE 4910-15-P

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

[Docket Nos. MC2009-15 and CP2009-21; Order No. 176]

#### New Domestic Mail Product

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

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

**DATES:** Effective February 6, 2009, and is applicable beginning January 27, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202-789-6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 74 FR 1262 (January 12, 2009).

The Postal Service seeks to add a new product identified as Express Mail Contract 3 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

#### I. Background

On December 31, 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 3

to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Express Mail Contract 3 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. MC2009-15.

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. CP2009-21.

*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 3 and certification of the Governors' vote;<sup>2</sup> (2) a redacted version of the contract which, among other things, provides that the contract will expire 1 year from the effective date, which is proposed to be the day the Commission issues all regulatory approvals;<sup>3</sup> (3) requested changes in the Mail Classification Schedule product list;<sup>4</sup> (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>5</sup> and (5) certification of compliance with 39 U.S.C. 3633(a).<sup>6</sup>

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. W. Ashley Lyons, Manager, Corporate Financial Planning, 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 Express Mail Contract 3, 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. It further believes that it would be inappropriate in this case to redact information through the "blackout" method since it could provide information or clues about the name of the customer, the length and breadth of price charts, the complexity of annual adjustment mechanisms, or other similar sensitive information. Accordingly, it redacts the sensitive information using ellipses. *Id.* at 3.

In Order No. 165, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>7</sup>

#### II. Comments

Comments were filed by the Public Representative.<sup>8</sup> 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 procedure, and concludes that the Express Mail Contract 3 agreement comports with the requirements of title 39. Public Representative Comments at 4. He further states that the agreement appears beneficial to the general public. *Id.* at 1. He notes that the Postal Service redacted information using ellipses rather than by the "blackout" method because the blackout method might provide information or clues regarding the name of the customer, the length and breadth of the price charts, the complexity of annual adjustment mechanisms, or other similar sensitive information. He believes that in this case the increased care might be warranted, but suggests that the Commission address this issue in its forthcoming rules regarding treatment of confidential information in Docket No. RM2008-1.

#### III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

*Statutory requirements.* The Commission's statutory responsibilities in this instance entail assigning Express Mail Contract 3 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C.

<sup>1</sup> Request of the United States Postal Service to Add Express Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, December 31, 2008 (Request).

<sup>2</sup> 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.

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

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

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

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

<sup>7</sup> PRC Order No. 165, Notice and Order Concerning Express Mail Contract 3 Negotiated Service Agreement, January 5, 2009 (Order No. 165).

<sup>8</sup> Public Representative Comments in Response to United States Postal Service Request to Add Express Mail Contract 3 to Competitive Product List, January 15, 2009 (Public Representative Comments).

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 3 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, 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 Express Mail Contract 3 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail Contract 3 is appropriately classified as

a competitive product and should be added to the Competitive Product List.

*Cost considerations.* The Postal Service's financial analysis shows that Express Mail Contract 3 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. 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 Commission notes that in evaluating costs under a prospective contract compared to the average, the Postal Service should take into account all departures from average cost that may be due to services provided under the contract. The failure to do so, while having no material effect on the underlying financial analysis of the contract in this instance, hampers the timely review of the Postal Service's financial analysis. See PRC Order No. 138, November 20, 2008, at 6–7.

Based on the data submitted, the Commission finds that Express Mail Contract 3 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 3 indicates that it comports with the provisions applicable to rates for competitive products.

*Redactions.* The Public Representative helpfully suggests that the Postal Service's method to redact certain sensitive information could be addressed in more detail in Docket No. RM2008–1. It is the Commission's understanding that the Postal Service now has the technology to use graphical, black box redaction methods. See Dockets No. MC2009–6 and CP2009–7, Public Representative Comments in Response to Order No. 125, November 10, 2008 at 10. Graphical redactions (as opposed to ellipses) are the most easily understandable form of redaction.

As a general matter, it is not apparent how graphical redaction methods could have resulted in harm to the Postal Service. If, nonetheless, the Postal Service chooses to use ellipses, it should more fully justify (under seal if necessary) the use of that method, including how graphical redactions compromise the confidentiality of the

information submitted and can cause harm to the Postal Service.<sup>9</sup>

*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 3 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 3 (MC2009–15 and CP2009–21) 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 changes for either 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.

Dated: January 27, 2009.

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 Schedule to read as follows:

<sup>9</sup>In this case, for example, the Postal Service states that the use of graphical redactions could provide information or clues on (1) the name of the customer; (2) the length and breadth of price charts; (3) the complexity of the annual adjustment mechanisms; and (4) other similar sensitive information. Request at 3. It offers no support for its position.

# APPENDIX A TO SUBPART A OF 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)s/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]

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)s/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]

Ancillary Services

[Reserved for Product Description]

Address Correction Service

[Reserved for Product Description]

Applications and Mailing Permits

[Reserved for Product Description]

Business Reply Mail

[Reserved for Product Description]

Bulk Parcel Return Service

[Reserved for Product Description]

Certified Mail

[Reserved for Product Description]

Certificate of Mailing

[Reserved for Product Description]

Collect on Delivery

[Reserved for Product Description]

Delivery Confirmation

[Reserved for Product Description]

Insurance

[Reserved for Product Description]

Merchandise Return Service

[Reserved for Product Description]

Parcel Airlift (PAL)

[Reserved for Product Description]

Registered Mail

[Reserved for Product Description]

Return Receipt

[Reserved for Product Description]

Return Receipt for Merchandise

[Reserved for Product Description]

Restricted Delivery

[Reserved for Product Description]

Shipper-Paid Forwarding

[Reserved for Product Description]

Signature Confirmation

[Reserved for Product Description]

Special Handling

[Reserved for Product Description]

Stamped Envelopes

[Reserved for Product Description]

Stamped Cards

[Reserved for Product Description]

Premium Stamped Stationery

[Reserved for Product Description]

Premium Stamped Cards

[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]

Address List Services

[Reserved for Product Description]

Caller Service

[Reserved for Product Description]

Change-of-Address Credit Card

Authentication

[Reserved for Product Description]

Confirm

[Reserved for Product Description]

International Reply Coupon Service

[Reserved for Product Description]

International Business Reply Mail Service

[Reserved for Product Description]

Money Orders

[Reserved for Product Description]

Post Office Box Service

[Reserved for Product Description]

Negotiated Service Agreements

[Reserved for Class Description]

HSBC North America Holdings Inc.

Negotiated Service Agreement

[Reserved for Product Description]

Bookspan Negotiated Service Agreement

[Reserved for Product Description]

Bank of America Corporation Negotiated

Service Agreement

The Bradford Group Negotiated Service

Agreement

## Part B—Competitive Products

### Competitive Product List

#### Express Mail

Express Mail

Outbound International Expedited Services

Inbound International Expedited Services

Inbound International Expedited Services 1

(CP2008–7)

Inbound International Expedited Services 2

(MC2009–10 and CP2009–12)

#### Priority Mail

Priority Mail

Outbound Priority Mail International

Inbound Air Parcel Post

#### Parcel Select

#### Parcel Return Service

#### International

International Priority Airlift (IPA)

International Surface Airlift (ISAL)

International Direct Sacks—M-Bags

Global Customized Shipping Services

Inbound Surface Parcel Post (at non-UPU

rates)

Canada Post—United States Postal Service

Contractual Bilateral Agreement for

Inbound Competitive Services (MC2009–

8 and CP2009–9)

International Money Transfer Service

International Ancillary Services

#### Special Services

Premium Forwarding Service

#### Negotiated Service Agreements

Domestic

Express Mail Contract 1 (MC2008–5)

Express Mail Contract 2 (MC2009–3 and

CP2009–4)

Express Mail Contract 3 (MC2009–15 and CP2009–21)  
 Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)  
 Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)  
 Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)  
 Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)  
 Priority Mail Contract 1 (MC2008–8 and CP2008–26)  
 Priority Mail Contract 2 (MC2009–2 and CP2009–3)  
 Priority Mail Contract 3 (MC2009–4 and CP2009–5)  
 Priority Mail Contract 4 (MC2009–5 and CP2009–6)  
 Outbound International  
 Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)  
 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)  
 Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)  
 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]

[FR Doc. E9–2487 Filed 2–5–09; 8:45 am]

**BILLING CODE 7710–FW–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[EPA–HQ–OAR–2008–0558; FRL–8771–6]

**RIN 2060–AP17**

### Regulation of Fuels and Fuel Additives: Gasoline and Diesel Fuel Test Methods

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

**ACTION:** Partial Withdrawal of Direct Final Rule.

**SUMMARY:** Because EPA received adverse comment, we are withdrawing the provision for the allowance of an alternative test method for olefins in gasoline of the direct final, published on December 8, 2008.

**DATES:** Effective February 6, 2009, EPA withdraws the amendments to 40 CFR 80.46(b)(2)(i) and 40 CFR 80.46(h)(1)(iii) published at 73 FR 74350 on December 8, 2008.

**FOR FURTHER INFORMATION CONTACT:** Joe Sopata, Transportation and Regional Programs Division, Office of Transportation and Air Quality (Mail Code: 6406J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., 20460; telephone number: (202) 343–9034; fax number: (202) 343–2802; e-mail address: [sopata.joe@epa.gov](mailto:sopata.joe@epa.gov).

**SUPPLEMENTARY INFORMATION:** Because EPA received adverse comment, we are withdrawing the provision to allow ASTM D6550 as an alternative test method for measuring the olefin content of gasoline, published on December 8, 2008. We stated in that direct final rule that if we received adverse comment by January 7, 2008, the portions of the direct final rule on which adverse comments were received would not take effect, and we would publish a timely

withdrawal of such portions of the direct final rule in the **Federal Register**. We subsequently received an adverse comment on the following provision: The amendments to 40 CFR 80.46(b)(2)(i) to allow ASTM D6550 as an alternative test method for olefins in gasoline. Because EPA received an adverse comment, we are withdrawing this provision, as well as 40 CFR 80.46(h)(1)(iii) which incorporates ASTM D6550 by reference.

EPA published a parallel proposed rule on the same day as the direct final rule. The proposed rule invited comment on the substance of the direct final rule. We will address the comment received on the portions of the direct final rule being withdrawn today in a subsequent final action based on the parallel proposed rule also published on December 8, 2008 (73 FR 74403). The provisions for which we did not receive adverse comment will become effective on February 6, 2009, as provided in the December 8, 2008, direct final rule.

Dated: February 2, 2009.

**Lisa P. Jackson,**  
*Administrator.*

■ Accordingly, the amendments to 40 CFR 80.46(b)(2)(i) and 40 CFR 80.46(h)(1)(iii) published at 73 FR 74350 on December 8, 2008 are withdrawn and reserved as of February 6, 2009.

[FR Doc. E9–2560 Filed 2–5–09; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 09–172; MB Docket No. 08–230; RM–11504]

### Television Broadcasting Services; Montgomery, AL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission grants a petition for rulemaking filed by Woods Communications Corporation, the permittee of station WCOV-DT, to substitute DTV channel 20 for its assigned post-transition DTV channel 16 at Montgomery, Alabama.

**DATES:** This rule is effective February 6, 2009.

**FOR FURTHER INFORMATION CONTACT:** Adrienne Y. Denysyk, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MB Docket No. 08–230,