

POSTAL REGULATORY COMMISSION**39 CFR Part 3020**

[Docket Nos. CP2008–11, CP2008–12, CP2008–13; Order No. 103]

Administrative Practice and Procedure; Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding several recently-negotiated Global Express Package Service contracts to the competitive product list. This action is consistent with changes in a recent law governing postal operations. Reproduction of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective September 4, 2008.

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

SUPPLEMENTARY INFORMATION:

Regulatory History

73 FR 43344, July 24, 2008

On August 5, 2008, the Postal Service filed three identical notices, which have been assigned to Docket Nos. CP2008–11, CP2008–12, and CP2008–13, announcing prices and classification changes for competitive products not of general applicability.¹ These notices announce individual negotiated service agreements, namely, specific Global Express Package Service (GEPS) contracts the Postal Service has entered into with individual mailers. The Postal Service believes each is functionally equivalent to the Global Express Package Services 1 (GEPS 1) product established in Docket No. CP2008–5. These dockets have been filed pursuant to 39 U.S.C. 3633, 39 CFR 3015.5 and Order No. 86.² In Order No. 86, the Commission found that additional contracts may be included as part of the GEPS 1 product if they meet the requirements of 39 U.S.C. 3633 and if they are substantially equivalent to the initial GEPS 1 contract.³

In support of each of these dockets, the Postal Service also filed the contract and supporting materials under seal.

¹ Notice of United States Postal Service of Filing of Functionally Equivalent Global Expedited Package Services 1 Negotiated Service Agreements, August 5, 2008, filed in Docket Nos. CP2008–11, CP2008–12, and CP2008–13 (Notices).

² Docket No. CP2008–5, Order Concerning Global Expedited Package Services Contracts, July 23, 2008 (Order No. 86).

³ Order No. 86 at 7.

The Governor's Decision supporting the GEPS 1 product was filed in consolidated Docket No. CP2008–5.⁴ The Notices also contain the Postal Service's arguments that these agreements are substantially equivalent and that they exhibit similar cost and market characteristics to the GEPS 1 product. Notices at 3–5.

In Order No. 95, the Commission gave notice of the three dockets, requested the Postal Service to address certain issues, appointed a Public Representative, and provided the public with an opportunity to comment.⁵

I. Postal Service Supplemental Filing

In response to Order No. 95, the Postal Service filed redacted versions of the certifications related to the contracts filed in Docket Nos. CP2008–11, CP2008–12, and CP2008–13.⁶ These versions redact the names of the contracting parties, the listed percentages, and commercial information relating to pricing factors that the Postal Service believes should not be publicly disclosed. *Id.*

II. Comments

Comments were filed by the Public Representative.⁷ The Public Representative's comments focus on four areas: (1) Cost coverage; (2) appropriate classification; (3) increased access to U.S. goods by consumers; and (4) transparency and disclosure. The Public Representative asserts that the three contracts at issue in this proceeding satisfy the requirements of Commission rule 3015.5 and 39 U.S.C. 3633 regarding cost coverage, the lack of cross-subsidization, and contribution to institutional costs. Comments of Public Representative at 3. The Public Representative also believes that the contracts are substantially similar and

any differences between them and the original GEPS 1 contract are immaterial. *Id.* at 4. Accordingly, the Public Representative contends that these contracts should be included as part of the GEPS 1 product category.

The remainder of the Public Representative's comments focus on the benefits of the contracts to U.S. consumers and the progress being made toward ensuring that only appropriately confidential information is submitted to the Commission under seal. *Id.* at 5–8.

III. Commission Analysis

The Postal Service proposes to add additional contracts under the GEPS 1 product that was created by Docket No. CP2008–5. In Order No. 86, the Commission noted that:

If the Postal Service determines that it has entered into an agreement substantially equivalent to GEPS 1 with another mailer, it may file such a contract under rule 3015.5. In each case, the individual contract must be filed with the Commission, and each contract must meet the requirements of 39 U.S.C. 3633. The Postal Service shall identify all significant differences between the new contract and the pre-existing product group, GEPS 1. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the contract. The Commission will verify whether or not any subsequent contract is in fact substantially equivalent. Contracts not having substantially the same terms and conditions as the GEPS 1 contract must be filed under 39 CFR part 3020, subpart B.

Order No. 86 at 7. First, the Commission reviews the contracts to ensure that they are substantially equivalent to the pre-existing contract classified as part of the GEPS 1 product and thus belong as part of that product category. Second, the Commission must ensure that the contracts at issue in this proceeding independently satisfy the requirements of rule 3015.5 and 39 U.S.C. 3633.

Here, the Postal Service has filed three additional contracts (Docket Nos. CP2008–11, CP2008–12, and CP2008–13) that it believes are substantially similar to the one submitted in Docket No. CP2008–5, and accordingly should be grouped under the GEPS 1 product. Notices at 3–5. It argues these contracts share the same cost and market characteristics as the previously classified GEPS 1 contract, in particular, those of small or medium-sized businesses that mail their products directly to foreign destinations using either Express Mail International, Priority Mail International, or both. *Id.* at 4.

The Postal Service also identifies differences between proposed new contracts and the pre-existing product group, GEPS 1. *Id.* at 4–5. In particular,

⁴ Docket No. CP2008–5, United States Postal Service Notice of Filing Redacted Copy of Governors' Decision No. 08–7, July 23, 2008.

⁵ PRC Order No. 95, Notice and Order Concerning Filing of Additional Global Expedited Package Services 1 Negotiated Service Agreements, August 11, 2008 (Order No. 95).

⁶ Docket No. CP2008–11, United States Postal Service Response to Notice and Order Concerning Global Expedited Package Services 1 Negotiated Service Agreements and Notice of Filing of Redacted Copy of Certifications, August 13, 2008; Docket No. CP2008–12, United States Postal Service Response to Notice and Order Concerning Global Expedited Package Services 1 Negotiated Service Agreements and Notice of Filing of Redacted Copy of Certifications, August 13, 2008; Docket No. CP2008–13, United States Postal Service Response to Notice and Order Concerning Global Expedited Package Services 1 Negotiated Service Agreements and Notice of Filing of Redacted Copy of Certifications, August 13, 2008.

⁷ Public Representative Comments in Response to United States Postal Service Notice of Global Expedited Package Services Contract, August 19, 2008 (Comments of Public Representative).

it notes the following differences: (1) Price differences depending on volume or postage commitments; (2) price differences due to updated costing information; (3) a link between the regulatory review process and the expiration date of the agreement; and (4) liquidated damages provisions based on individual negotiations and needs.

The Commission has reviewed the contracts in Dockets No. CP2008–11, CP2008–12, and CP2008–13 and finds those agreements to be substantially equivalent in all pertinent respects to the GEPS 1 product.⁸

Additionally, the Commission reviews the filings to ensure that they meet the requirements of rule 3015.5 and 39 U.S.C. 3633. The Commission has reviewed the financial analysis provided under seal that accompanies the agreements in all three dockets as well as the comments filed by interested persons. Based on the information provided, the Commission finds that all three proposed contracts submitted should cover their 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, a preliminary review of the proposed contracts indicates that they comport with the provisions applicable to rates for competitive products.

The revisions to the competitive product list are shown below the signature of this Order, and shall become effective upon publication in the **Federal Register**.

IV. Ordering Paragraphs

It is Ordered:

1. The contracts filed in Dockets Nos. CP2008–11, CP2008–12, and CP2008–13 are added to the product category Global Express Package Services 1 (CP2008–5).

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

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

⁸ The differences between the contracts and the originally classified GEPS 1 contract do not appear to be substantial. However, this finding does not preclude the Commission from revisiting this issue at a future date if circumstances warrant.

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 Parts A and B of 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.

PART A—MARKET DOMINANT PRODUCTS—Continued

1000 Market Dominant Product List

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.
1001 Market Dominant Product Descriptions.

PART B—COMPETITIVE PRODUCTS

2000 Competitive Product List

Express Mail

Express Mail.
Outbound International Expedited Services.
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7).

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).
International Money Transfer Service.
International Ancillary Services.

Special Services

Premium Forwarding Service.

Negotiated Service Agreements

Domestic
Express Mail Contract 1 (MC2008–5).
Outbound International
Global Expedited Package Services (GEPS) Contracts
GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13).
Global Plus Contracts
Global Plus 1 (CP2008–9 and CP2008–10).

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