

Issued in Washington, DC, on this 11th day of August 2008.

Vincent K. Snowbarger,

Deputy Director for Operations, Pension Benefit Guaranty Corporation.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. MC2008-5; Order No. 94]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding the Postal Service's Express Mail Contract 1 to the competitive product list. This action is consistent with changes in a recent law governing postal operations. Re-publication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective August 15, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

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

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2008, the Postal Service filed a request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30, *et seq.* to modify the Mail Classification Schedule by adding Express Mail Contract 1 to the competitive product list. The Postal Service asserts that Express Mail Contract 1 is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3).¹ A redacted version of the Governors' Decision establishing the price and classification and a certification of the Governors' vote is included as Attachment A to the filing (Attachment A). The requested changes in the Mail Classification Schedule product list are included in the filing as Attachment B with the new product shown in brackets.² The statement of supporting

¹ Request of the United States Postal Service to Add Express Mail Contract to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, July 21, 2008 (Request).

² The draft Mail Classification Schedule (MCS) remains under review. The Commission anticipates

justification required by 39 CFR 3020.32 is included as Attachment C to the filing (Attachment C).

In the same July 21, 2008 filing, the Postal Service gives notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, that the Governors have established prices and classifications not of general applicability for Express Mail Contract 1. Request at 2.

In support of its Request, the Postal Service has also filed materials under seal, including an unredacted version of an explanation and justification in the Governors' Decision and an unredacted analysis. Also filed under seal are the cost and revenue data and the certification of compliance with 39 U.S.C. 3633(a)(1), (2), and (3). The Postal Service asserts "that the contract, related financial information, the customer's name and the portions of the Governors' Decision and accompanying analysis that provides prices, terms, and conditions should remain confidential." *Id.*

After its initial review, the Commission sought additional information with respect to several issues in this case. Toward that end, it issued Commission Information Request No. 1 on July 29, 2008.³ The Postal Service promptly responded providing the requested clarifying information on August 4, 2008.⁴

As noted above, the Postal Service filing in this docket was made pursuant to rule 3015.5 and rule 3020.30 *et seq.* As a consequence, the Commission will review the filing under both rule 3015 and part 3020, subpart B.

II. Comments

Comments were filed by United Parcel Service (UPS),⁵ the Public Representative,⁶ and David B. Popkin.⁷

providing interested persons an opportunity to comment on the draft MCS in the near future.

³ Commission Information Request No. 1, July 29, 2008.

⁴ See Notice of Response of the United States Postal Service to Commission Information Request No. 1, August 4, 2008.

⁵ Comments of United Parcel Service in Response to Order Concerning Modification of the Mail Classification Schedule and Prices Under Express Mail Negotiated Service Agreement, July 31, 2008 (UPS Comments).

⁶ Public Representative Comments in Response to United States Postal Service Request to Modify the Mail Classification Schedule and Prices Under Express Mail Negotiated Service Agreement, July 31, 2008 (Public Representative Comments).

⁷ Initial Comments of David B. Popkin, July 31, 2008 (Popkin Comments). Popkin also filed a Letter of Intervention and Request for Information. Letter from David B. Popkin to Steven W. Williams, Notice of Intervention and Request for Information, July 30, 2008 (Letter). The Commission notes that notices of intervention are not necessary for the filing of comments in these types of proceedings and are, in fact, discouraged. Where appropriate,

UPS urges the Commission to require public disclosure of the proposed contracts subject to adequate safeguards to allow meaningful public review. It believes that if interested parties are denied access to this information, the complaint process under section 3662 will be largely rendered a nullity. UPS Comments at 2.

Along the same lines, Popkin expresses concern that because the Postal Service's filing was largely under seal, the public cannot comment meaningfully on it. Popkin Comments at 2. In addition, Popkin offers several observations about the filing in this case and waiver of signature upon delivery. *Id.* at 3.

The Public Representative comments on several aspects of the Postal Service's filings in this case including (1) confidentiality; (2) pricing, cost coverage, and contribution; and (3) the specific agreement. With respect to confidentiality, the Public Representative argues that the Postal Service should justify the limits of all confidentiality requests to comport with the spirit of Federal Rules of Civil Procedure 26(c) and the Freedom of Information Act. Public Representative Comments at 3. With respect to pricing, cost coverage and contribution, the Public Representative acknowledges that the pricing in the negotiated service agreement (NSA) comports with the provisions of title 39. With respect to the specific agreement, the Public Representative believes that it promotes an increased Express Mail volume, specifically pieces that are less costly to process. *Id.* at 5.

III. Commission Analysis

A. Statutory Requirements

The statutory responsibility of the Commission, in this instance, is to assign a new product to either the market dominant list or the competitive product list. 39 U.S.C. 3642. As part of this responsibility, the Commission also will preliminarily review the proposal for compliance with the requirements of the Postal Accountability and Enhancement Act (PAEA) of 2006. For proposed competitive products, this includes a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

The Postal Service contends that adding the Express Mail Contract 1 product will result in processing Express Mail pieces that are less costly for the Postal Service than the average Express Mail piece. See Request, Attachment A. It believes that its

motions may be filed under Commission rule 3001.21.

financial analysis shows that these cost savings can be accomplished 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. *Id.*; Request, Attachment C, at 1.

The Commission has reviewed the financial analysis provided under seal that accompanies the agreement as well as the comments filed by interested persons. Based on the information provided, the Commission finds that the proposed product submitted 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, a preliminary review of the proposed Express Mail Contract 1 product indicates that it comports with the provisions applicable to rates for competitive products.

In determining whether to assign the Express Mail contract as a product to the market dominant product list or the competitive product list the Commission must consider whether

[T]he 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 this is the case, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

In Order No. 43, the Commission issued regulations establishing a modern system of rate regulation, including a list of competitive products. PRC Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007, paras. 3061, 4013. Among other things, the Commission determined that each NSA would initially be classified as a separate product. The specific Express Mail Contract 1 filed in this docket will be classified as a new product.

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 that 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, the

market precludes the Postal Service from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment C, at 2–3. The Postal Service also contends that the Postal Service may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* at 2. It further states that the user/NSA partner supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. Finally, the Postal Service states that due to the fact that Express Mail requires a substantial infrastructure to support a national network, large shippers serve the market under consideration. Accordingly, the Postal Service is unaware of any small business concerns that could offer comparable service for this customer. *Id.*

No commenter opposes the proposed regulatory classification of the Express Mail Contract 1 as competitive, and no late-filed comments were received.⁸ Having considered the statutory requirements, the argument put forth by the Postal Service, and the public comment, the Commission finds that Express Mail Contract 1 is appropriately classified as a competitive product and should be added to the competitive product list. 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**.

B. Updating the Mail Classification Schedule

The Express Mail contract contains a provision for early termination of the contract. The Postal Service shall promptly notify the Commission of an early termination, but in no event later than the actual termination date. The Commission then will remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

C. Confidentiality

The Commission is aware that the treatment of information as confidential is a sensitive issue. The Postal Service, the Public Representative, United Parcel Service, and Popkin all express valid concerns with respect to documents submitted under seal. Very shortly, the Commission will address these issues on a broader level and establishing procedures to determine the degree of confidentiality to be accorded to this type of information. Interested persons will have an opportunity to comment on

appropriate procedures governing the treatment of confidential information filed by the Postal Service.

It is Ordered:

1. The Express Mail Contract 1 will be added to the competitive product list as a separate product under Negotiated Service Agreements, Domestic as Express Mail Contract 1 (MC2008–5).

2. The Secretary shall arrange for publication of the amended product list in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

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:

■ 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 (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

⁸ See Public Representative Comments at 2.

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
 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)
 Global Plus Contracts
 Global Plus 1 (CP2008–9 and CP2008–10)

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[FR Doc. E8–18872 Filed 8–14–08; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2005–TX–0027; FRL–8704–
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Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Chapter 117 and Emission Inventories for the Dallas/ Fort Worth 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection
 Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving
 portions of revisions to the State
 Implementation Plan (SIP) submitted by

the State of Texas on May 13, 2005, to
 meet the 5% Increment of Progress (IOP)
 requirement for the Dallas/Fort Worth
 (DFW) nonattainment area. EPA is not
 taking action on the 5% IOP plan in this
 rulemaking. EPA is approving the 2002
 base year inventory for the DFW 8-hour
 ozone nonattainment area. EPA is also
 approving emissions reductions from
 energy efficiency measures
 implemented within the DFW 8-hour
 ozone nonattainment area, and revisions
 to 30 TAC, Chapter 117, Control of Air
 Pollution From Nitrogen Compounds,
 concerning stationary reciprocating
 internal combustion (IC) engines
 operating within the DFW 8-hour ozone
 nonattainment area. EPA is also
 approving into the SIP a federal consent
 decree and subsequent amendments
 thereto concerning the Alcoa Rockdale
 plant in Milam County. These actions
 result in emissions reductions in the
 DFW 8-hour ozone nonattainment area
 and are taken in accordance with
 section 110 and part D of the Clean Air
 Act (the Act) and EPA's regulations.

DATE: This final rule is effective on
 September 15, 2008.

ADDRESSES: EPA has established a
 docket for this action under Docket No.
 EPA–R06–OAR–2005–TX–0027. All
 documents in the docket are listed on
 the www.regulations.gov Web site.
 Although listed in the index, some
 information is not publicly available,
 e.g., CBI or other information whose
 disclosure is restricted by statute.
 Certain other material, such as
 copyrighted material, is not placed on
 the Internet and will be publicly
 available only in hard copy form.
 Publicly available docket materials are
 available either electronically through
www.regulations.gov or in hard copy at
 the Air Planning Section (6PD–L),
 Environmental Protection Agency, 1445
 Ross Avenue, Suite 700, Dallas, Texas
 75202–2733. The file will be made
 available by appointment for public
 inspection in the Region 6 FOIA Review
 Room between the hours of 8:30 a.m.
 and 4:30 p.m. weekdays except for legal
 holidays. Contact the person listed in
 the **FOR FURTHER INFORMATION CONTACT**
 paragraph below or Mr. Bill Deese at
 214–665–7253 to make an appointment.
 If possible, please make the
 appointment at least two working days
 in advance of your visit. There will be
 a fee of 15 cents per page for making
 photocopies of documents. On the day
 of the visit, please check in at the EPA
 Region 6 reception area at 1445 Ross
 Avenue, Suite 700, Dallas, Texas.

The State submittal, which is part of
 the EPA record, is also available for
 public inspection at the State Air

Agency listed below during official
 business hours by appointment: Texas
 Commission on Environmental Quality,
 Office of Air Quality, 12124 Park 35
 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Ms.
 Carrie Paige, Air Planning Section
 (6PD–L), Environmental Protection
 Agency, Region 6, 1445 Ross Avenue,
 Suite 700, Dallas, Texas 75202–2733,
 telephone (214) 665–6521; fax number
 214–665–7263; e-mail address
paige.carrie@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us,”
 and “our” means EPA.

Outline

- I. Background
- II. What Action Is EPA Taking?
- III. What Comments Did EPA Receive on the
 August 22, 2006 Proposed Rulemaking
 for DFW?
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. Background

On August 22, 2006, EPA proposed
 approval of the 5% Increment of
 Progress (IOP) plan for the nine counties
 that comprise the DFW 8-hour ozone
 nonattainment area; the 2002 base year
 emissions inventory (EI); the 2007 motor
 vehicle emissions budget (MVEB); and
 related control measures, including a
 federal consent decree concerning an
 Alcoa plant in Rockdale, Milam County,
 dated April 9, 2003; energy efficiency
 measures implemented within the DFW
 8-hour ozone nonattainment area; and
 revisions to 30 TAC, Chapter 117,
 Control of Air Pollution From Nitrogen
 Compounds, concerning stationary
 reciprocating IC engines operating
 within the DFW 8-hour ozone
 nonattainment area.

The August 22, 2006, proposal
 provides a detailed description of the
 revisions and the rationale for EPA's
 proposed actions, together with a
 discussion of the opportunity to
 comment. The public comment period
 for these actions closed on September
 21, 2006. See the Technical Support
 Documents (TSDs) or our proposed
 rulemaking at 71 FR 48870 for more
 information.

On December 22, 2006, the U.S. Court
 of Appeals for the District of Columbia
 Circuit issued a decision in response to
 challenges to EPA's Phase 1
 Implementation Rule for the 8-hour
 Ozone Standard (Phase 1 Rule), granting
 challenges to certain provisions of the
 rule and denying other challenges (69
 FR 23951, April 30, 2004). *South Coast
 Air Quality Mgmt. Dist. v. EPA*, 472 F.3d
 882 (DC Cir. 2006). Because of this
 ruling, EPA decided to delay taking