

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MODIFICATION OF MAIL CLASSIFICATION SCHEDULE
FOR INTERNATIONAL MAIL RATE CATEGORIES

Docket No. MC2009-16

**UNITED STATES POSTAL SERVICE MOTION FOR RECONSIDERATION OF
ORDER NO. 183
(February 24, 2009)**

On February 13, 2009, the United States Postal Service gave notice of changes in classification governing the availability of certain rate categories to selected destinations, pursuant to 39 C.F.R. §§ 3020.90 and 3020.91.¹ With that filing, the Postal Service submitted to the Commission conforming changes in the Mail Classification Schedule (MCS), which it believes are consistent with 39 U.S.C. § 3642 and which are to become effective on March 2, 2009.

On February 19, the Commission issued its Notice and Order No. 183 (Order), in which it formally established the above-captioned docket, appointed a Public Representative, opened the matter for public comment, and requested certain supplemental information from the Postal Service.² The Order also advised that the Commission interpreted the addition of certain destinations to existing rate groups as the establishment of new rates for those destinations.³ Accordingly, the Commission advised that future such filings must be additionally filed under “CP” dockets and subject to the requirements of 39 C.F.R. Part 3015. In the instant proceeding, the Commission

¹ Notice of the United States Postal Service of Classification Change, Docket No. MC2009-16, Feb. 13, 2009.

² Notice and Order Concerning Priority Mail International Classification Change, Docket No. MC2009-16, Feb. 19, 2009.

³ *Id.* at 2.

ordered the Postal Service, by February 24, (1) to provide supplemental information demonstrating compliance with 39 U.S.C. § 3633, as befits a change in competitive product prices, and (2) to indicate which Priority Mail International (PMI) items will be available in each of the three identified countries.⁴

With an accompanying filing, the Postal Service provides the requested identification of relevant PMI items and, under seal, updated financial information that demonstrates that the relevant products will continue to fulfill the criteria of 39 U.S.C. § 3633. For the reasons set forth below, however, the Postal Service respectfully requests that the Commission reconsider its interpretation of the Postal Service's action and its concomitant determination to treat this and similar matters as subject to 39 U.S.C. § 3633 and 39 C.F.R. Part 3015.

I. Underlying Purpose of Change; Identification of Relevant PMI Items

This classification change is intended to give effect to a proposed change to IMM mailing standards, which in turn would offer to customers existing PMI flat rate envelope (FRE) and/or small flat rate box (SFRB) rates to Ascension Island and Falkland Islands, and existing PMI FRE rates to the People's Democratic Republic of Korea (North Korea). These destinations were not previously available for such items.⁵

Although the Postal Service brands the PMI FRE and SFRB as "PMI" for its own product branding purposes, these items are handled and rated as Letter Post under the Universal Postal Union system. Letter Post flats and envelope-sized pieces are already

⁴ *Id.* The Postal Service has filed responsive information under separate cover. Response of the United States Postal Service to Order No. 183 and Notice of Filing (Under Seal) Supplemental Information, Docket No. MC2009-16, Feb. 24, 2009.

⁵ The other changes are designed to restrict online published discounts for international expedited and parcel services to certain country destinations. The Commission's determination in Order No. 183 does not appear to concern these changes, and the Postal Service intends to implement conforming changes to the International Mail Manual on March 2 for this aspect of the proposed revisions.

available to these destinations when using First-Class Mail International service. This change does not result in a new Parcel Post flow to these countries; rather, it is merely the extension of flat-rate Letter Post options, which coincidentally are branded as PMI under the product classification system in the International Mail Manual (IMM) and Mail Classification Schedule (MCS), to destinations that accept other Letter Post products. The extension in the geographic scope for PMI FRE and SFRB items necessitated an adjustment to the country listings included as an appendix to the MCS.

II. Country Group Reassignment Is Not A Price Change

The change at issue in this proceeding amounts to a mere extension in the geographic scope of two flat-rate PMI items. Viewed another way, the change adds two pre-existing Letter Post products to the range of Letter Post options available to the applicable destinations. One thing this change does not affect is the price associated with each rate group. In fact, for the PMI FRE and SFRB, the prices are the same for all destinations except Canada and Mexico.⁶ Rather than “establishing” or “changing” PMI FRE and SFRB prices, this action simply constitutes a change in service availability at existing rates.

This sort of change to the country group listings is the international analogue of restoring or adding domestic Express Mail service to a ZIP Code for which it was not offered previously, such as during the recovery from Hurricane Katrina.⁷ In both cases, service is being extended to additional locations based on pre-existing rates. In the

⁶ See International Mail Manual § 232.2; Decision No. 08-19 of the Governors of the United States Postal Service on Changes in Rates and Classes of General Applicability for Competitive Products (Nov. 12, 2008), Att. B, at 81, *filed in* Docket No. CP2009-8, Nov. 13, 2008.

⁷ By the same token, deletion of a destination country from a rate group listing is analogous to a suspension of domestic service to a ZIP Code. In the domestic sphere, this might be the result of a declared emergency; in the international sphere, service availability can also be hindered by war or a humanitarian crisis. In neither case is the service response properly treated as a price change.

domestic sphere, this action would not constitute a classification change necessitating edits to the MCS, much less a price change. The same should be true with respect to these types of country listing changes. To construe the matter otherwise would effectively require joint “MC” and “CP” proceedings for virtually any service availability change and would undermine the procedural distinctions Congress clearly intended to draw between 39 U.S.C. §§ 3633, 3642, and 3661.

The fact that the MCS happens to include a reader guide to geographic availability for international, but not domestic, products should not affect the outcome, particularly since the Commission did not even mention the MCS Appendix in Order Nos. 26 and 43 or in any other way suggest that the Appendix had substantive legal weight. Judging from its placement in the MCS and the lack of attention paid to it in Order Nos. 26 and 43, the Appendix appears to be intended as a reference guide for users, not as a table of rate categories. In its current form, the table does not list prices; rather, it cross-references the price groups set forth elsewhere in the MCS. Because the Appendix is only intended to assist readers and not to be an essential operative part of the MCS, the Postal Service proposes that, as an alternative to reconsideration, the Appendix be removed from the MCS and replaced with a cross-reference to the country tables in the IMM.⁸

To support its interpretation, the Commission appears to analogize country listings for a given product to the grouping of functionally equivalent negotiated service agreements (NSAs) within a common “shell classification.”⁹ The Postal Service respectfully submits that this comparison confuses two very different matters. The

⁸ The IMM is incorporated by reference in the Code of Federal Regulations at 39 C.F.R. § 20.1.

⁹ Order No. 183 at 2 n.2.

approach to NSAs was established with the Commission's determination that each NSA is a separate product, but that functionally equivalent NSAs may, upon proper showing, be classified together as a single product.¹⁰ In other words, NSA classification can be viewed as a "bottom-up" process. In contrast, a listing of destination countries consists of a single facet of an overarching product's service description. Here, a "top-down" taxonomy is at work: Outbound PMI is the established product, the FRE and SFRB are rate categories within that product, and the country listings are descriptive aspects of each rate category.

In Order No. 183, the Commission appears to take the view that each country destination for a rate-bearing service constitutes a separate product with a separate price subject to 39 C.F.R. Part 3015. This conflation of rate and classification would constitute a departure from the generally accepted notion that Outbound PMI in itself constitutes a competitive product of general applicability,¹¹ making its price charts – which are unaffected by the Postal Service's Notice in this proceeding – the relevant prices subject to 39 U.S.C. § 3633.¹² In Order No. 43, the Commission repeatedly gave assurances that, "in order to preserve Postal Service flexibility," product scope changes not rising to the level of an addition to, deletion from, or transfer between product lists

¹⁰ Order No. 43 Establishing Ratemaking Regulations for Market Dominant and Competitive Products, Docket No. RM2007-1, Oct. 29, 2007, at ¶¶ 1003, 2177, 3001; Order No. 26 Proposing Regulations to Establish a System of Ratemaking, Docket No. RM2007-1, Aug. 15, 2007, at ¶¶ 3023, 3073 n.75, 3079 & n.77.

¹¹ Order No. 43 at ¶ 4004; Order No. 26 at ¶ 3010.

¹² This interpretation is consistent with 39 U.S.C. § 102(7), which establishes that "rates, as used with respect to products, includes fees for postal services." Accordingly, the Governors of the Postal Service establish the product and service fees contained in each applicable section of the MCS, as currently envisioned. The Governors have already done this for the products and services at issue in this proceeding. Governors' Decision No. 08-19, Att. B, at 81 (establishing prices for PMI FRE and SFRB, by country group, within Section 2215.7 of the MCS ("Outbound Priority Mail International: Prices")).

would not be subject to in-depth review.¹³ If the Commission is intent on exploring such a revision to its established system of ratemaking, then the Postal Service proposes that a broader proceeding would offer a more appropriate opportunity to analyze the merits of this alternative approach.

III. Practical Implications of Order No. 183

Application of the price change rules to any change in the country groupings for a given product would impose undue burden on the Postal Service's ability to manage its competitive products in line with legal obligations, commercial considerations, and customer demands. This burden would extend beyond postal management to the Governors and the Commission. If Order No. 183 is given its natural effect, it would appear to govern each time the Postal Service changes the country listings (1) from a published rate group assignment to no service, (2) from no service to a published rate group assignment, and possibly (3) from one published rate group to another. As in this case, most country table changes affect small nations that receive little traffic. In addition, country group listings change frequently for various reasons that are often beyond the Postal Service's control. A country group listing can simply be affected by changes in diplomatic relations, for example, such as the U.S. Government's recognition of Montenegro as an independent country in 2006. It may also result from changes in the range of articles that the United States or a destination country allows to be mailed to that country. Thus, the rigorous exercise associated with pricing review

¹³ Order No. 43 at ¶¶ 2038 ("The Commission does not contemplate engaging in pre-implementation review of the merits of any classification change."), 4031 ("The purpose of [39 C.F.R. Part 3020,] subpart E is to keep the Mail Classification Schedule up to date when product changes are made below the 39 U.S.C. 3642 level. . . . Subpart E was not intended as an avenue for comprehensive pre-implementation review of classification changes").

and its attendant competitive concerns seems an unnatural fit for service availability changes that can respond to external factors.

In contrast with the scale, scope, and nature of this type of relatively minor, formal service changes, Order No. 183 suggests that, for the time being at least, postal management must undergo an unprecedented number of time-consuming steps to accomplish them:

1. Prepare and submit a ballot package to the Postal Service Governors, and secure a written decision from them;
2. Submit the Governors' decision to the *Federal Register* in time for publication 30 days before the changes' planned effective date;
3. File the Governors' decision and revised MCS language with the Commission, along with additional explanatory materials responsive to 39 C.F.R. Part 3015; and
4. Publish a notice of corresponding changes to the International Mail Manual.

The considerable amount of cross-functional effort and resources that would be consumed by this effort – on the part of postal management, the Governors, and the Commission alike – would dwarf both the financial and operational significance of the changes themselves.¹⁴ The effort would also be disproportionate to any public benefit from the marginal increase in transparency due to 39 U.S.C. § 3633 treatment. The Postal Service submits that this result will do little to advance the accountability aims of the Postal Accountability and Enhancement Act (PAEA), while only hampering, rather than enhancing, the Postal Service's intended flexibility with respect to competitive products under the PAEA.

¹⁴ As stated in Order No. 43, the Commission intended 39 C.F.R. § 3020.90 *et seq.* as a streamlined method for relatively minor changes to a product classification that would both “facilitate[] the Commission’s maintenance of the product lists *and make[] it possible for the Commission to undertake its other statutory responsibilities.*” *Id.* at ¶ 4031 (emphasis added).

V. Conclusion

The Postal Service respectfully tenders the above formal and practical concerns for the Commission's consideration. Accordingly, the Postal Service requests that the Commission reconsider its Order to the extent that the proposed changes constitute classification changes subject to 39 U.S.C. § 3642 and 39 C.F.R. Part 3020, and not price changes subject to 39 U.S.C. § 3633 and 39 C.F.R. Part 3015.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Anthony Alverno
Chief Counsel, Global Business

Jacob Howley

475 L'Enfant Plaza West, S.W.
Washington, D.C. 20260-1137
(202) 268-8917, Fax -6817
jacob.d.howley@usps.gov
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