

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

CANADA POST – UNITED STATES POSTAL SERVICE
CONTRACTUAL BILATERAL AGREEMENT FOR INBOUND
COMPETITIVE SERVICES
MINOR CLASSIFICATION CHANGE

Docket Nos.
MC2010-33

**NOTICE OF UNITED STATES POSTAL SERVICE OF PROPOSED MINOR
CLASSIFICATION CHANGE CONCERNING CANADA POST – UNITED STATES
POSTAL SERVICE CONTRACTUAL BILATERAL AGREEMENT FOR INBOUND
COMPETITIVE SERVICES**

(August 2, 2010)

In accordance with 39 C.F.R. § 3020.91 et seq., the United States Postal Service (Postal Service) hereby gives notice of a minor classification change concerning the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services.

I. Background

The Postal Service Governors approved the establishment of the 2010-11 Canada Post bilateral agreement for competitive services in Governors' Decision 09-16.¹ The agreement sets rates for inbound competitive services from Canada in calendar years 2010 and 2011. The classification established by the Governors includes rates for two types of services: Xpresspost, which the Postal Service handles in a manner comparable to domestic Priority Mail, and surface parcels (also known by Canada Post's service name "Expedited Parcels"), which the Postal Service currently handles in its domestic Parcel Post surface network. In Docket Nos. MC2010-14 and

¹ Decision of the Governors Of The United States Postal Service on the Establishment Of Prices and Classifications For Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Governors' Decision No. 09-16).

CP2010-13, the Postal Service requested that the Commission add the inbound competitive portion of the agreement to the competitive products list in a stand-alone category at section 2613 of the Mail Classification Schedule (MCS), to account for the hybrid surface and air traffic tendered under the agreement.

In Order No. 376, the Commission added the product to the competitive products list. In that order, the Commission determined to list the agreement under the Mail Classification Schedule (MCS) heading for Inbound Surface Parcel Post (at non-UPU rates).²

II. Minor Classification Change – Upgrade for Expedited Parcels

In this docket, the Postal Service proposes that the classification be changed as follows:

1. Items currently entered at the negotiated surface parcel rates and handled in the U.S. in the Parcel Post (surface) network would be upgraded and handled as Priority Mail, as Xpresspost is handled today. Beginning August 23, such items would no longer be subject to the negotiated surface parcel rates; rather, they would be subject to the negotiated rates established for Xpresspost merchandise in the current agreement.
2. Some residual Xpresspost items would be accepted at the current Xpresspost merchandise and document rates through December 31, 2010. This volume is expected to be small.

The classification change is shown in Attachment 1 to this filing. The original classification language adopted by the Governors is modified by the addition of a

² Order No. 376, Order Concerning Bilateral Agreement with Canada Post for Inbound Competitive Services, Docket Nos. MC2010-14 and CP2010-13, December 30, 2009.

sentence that describes the effect of the upgrade in service offered to items branded by Canada Post as Expedited Parcels. For clarity, the term “Expedited Parcels” is added in parentheses in the first sentence to describe what are known as surface parcels. The second sentence describes the service upgrade for Expedited Parcels. Essentially, Expedited Parcels will be subject to the Xpresspost merchandise rates and service for dispatches beginning August 23, 2010. The classification language further provides that some residual Xpresspost will continue to be rated and handled as Xpresspost is today. This is due to the fact that some Xpresspost mailing labels will continue to be in circulation through the end of calendar year 2010. Consequently, the classification language includes a hybrid of Expedited Parcels and Xpresspost from August 23, 2010, to December 31, 2010. Beginning January 1, 2011, the classification would only include Expedited Parcels subject to Xpresspost merchandise rates.³

The classification language as shown in the attachment is consistent with the placement of the original text in Governors’ Decision No. 09-16. The Postal Service acknowledges that in Order No. 376, the Commission listed the Canada Post competitive bilateral under the header for Inbound Surface Parcel Post (at non-UPU rates). However, this placement did not account for Xpresspost items, which were reclassified as competitive in Docket Nos. MC2010-14 and CP2010-13 and are not the same as surface parcels. Consequently, the agreement with its current flows, or with the future upgraded flows, probably belongs in a separate stand-alone category, such as section 2613 as established through Governors’ Decision 09-16.

³ The classification language does not describe a separate, planned upgrade for Xpresspost to the Express Mail network, however, since that change will be handled through separate regulatory filings as described in section IV below.

At a more basic level, the change at issue here simply results in Canada Post no longer availing itself of some existing rates in the agreement because it will no longer dispatch parcels for entry in the surface network, and in Canada Post tendering more volume in other rate and service categories under the agreement. Canada Post was under no obligation to tender surface parcels to the Postal Service, and its corporate decision to no longer utilize rates and service for surface parcels in the agreement does not give rise to the addition, removal, or transfer of a new product. In this sense, no filing under 39 C.F.R. § 3020.31 is necessary in this case.

III. Financial Information

The financial effects of the change were not modeled in Docket Nos. MC2010-14 and CP2010-13 because, at the time that the financial documentation was originally prepared, there was no clear timetable when any change in service for Canada-origin traffic would be implemented during the two year term. In the absence of such information, the Postal Service assumed for modeling purposes that the surface parcel and Xpresspost flows would continue as originally envisioned for the duration for the two year term. The Postal Service understands, however, that the Commission may wish to study the financial effects of this minor change. Thus, while not necessarily required in support of a minor classification case, the Postal Service is voluntarily furnishing financial information under seal in a nonpublic annex to show the impact of the upgrade associated with Expedited Parcels. An application for nonpublic treatment of that financial information is also provided as Attachment 2 to this notice. Although these financial data are not necessary for this proceeding, the Postal Service notes that the results accord with the statutory criteria in 39 U.S.C. § 3633(a)(2).

IV. Future Filings Related to Upgraded Xpresspost Items

Through separate notices to be filed with the Commission in the future, the Postal Service will give effect to a second form of upgrade for items currently received as Xpresspost. As discussed above, currently, Xpresspost items are handled in the U.S. in the Priority Mail network. Beginning on August 23, such items would no longer be subject to Xpresspost rates; rather, they would be handled in the Express Mail network and subject to established rates for inbound Express Mail Service (EMS), which are currently established through price formulas contained in Governors' Decision No. 08-5.⁴

The Postal Service intends to give effect to the upgrade for Xpresspost through two separate measures:

1. For Xpresspost items received in the remainder of calendar year 2010, the rates paid by Canada Post are equivalent to the "tier 1" rates paid by other EMS Cooperative members, with the minor exception that the Canada Post rates denominated in Special Drawing Rights (SDR) have three digits after the decimal point rather than two digits.⁵ The Postal Service accordingly considers that the calendar year 2010 rates paid by Canada Post for Xpresspost for calendar year 2010 may be merged with the rates for EMS from other countries and reported as part of the EMS product known as Inbound International Expedited Services 2.⁶ To give effect to the change, in

⁴ Decision of the Governors of the United States Postal Service on the Inbound Price Of Services Offered Under Express Mail International (EMS) Bilateral/Multilateral Agreements (Governors' Decision No. 08-5).

⁵ See Canada Post Corporation-United States Postal Service Contractual Bilateral Agreement filed as enclosure under letter from Anthony Alverno, Chief Counsel, USPS, to Shoshana Grove, Secretary, Postal Regulatory Commission, Attachment 1, Page 2, January 21, 2010 (EMS Rates); see also Docket No. CP2009-57, nonpublic annex, Excel spreadsheet WP-Inbound_EMS-02, page 2 ("inputs").

⁶ PRC Order No. 281, Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, Docket No. CP2009-57, August 19, 2009, at 5.

the next quarterly filing of the EMS country listing responsive to Order No. 162⁷ due by October 1, 2010, the Postal Service will list Canada as a tier 1 country, since it will be dispatching EMS-rated items beginning on August 23, 2010. For reporting purposes, the Postal Service proposes to aggregate Canada-origin volumes with other inbound EMS received from August 23, 2010, to the end of the fiscal year and in Quarter 1 of Fiscal Year 2011, consistent with the Mail Classification Schedule.

2. For Xpresspost items received in calendar year 2011, the EMS rates paid by Canada Post are expected to be treated as a separate “product” on the mail classification schedule if the rates offered to Canada Post differ from the rates charged other postal operators. If that proves to be the case, then the Canada Post agreement’s classification treatment in this regard would be akin to the classification of the inbound EMS agreement with China Post, which is listed as a separate product on the mail classification schedule as Inbound International Expedited Services 3.⁸ Thus, assuming that the rates charged to Canada Post for EMS-rated items are not the same as other rates charged to other countries, then before the end of calendar year 2010, the Postal Service will accordingly initiate a separate, combined mail classification and competitive price change proceeding to give effect to the calendar year 2011 rates for Xpresspost handled in the EMS network.

V. Conclusion

The Postal Service hereby gives notice of the minor classification change described above. The Postal Service requests that the Commission find the change to

⁷ Order No. 162, Order Adding Inbound International Expedited Services 2 to Competitive Product List, Docket Nos. MC2009-10 and CP2009-12, December 31, 2008.

⁸ See PRC Order No. 365, Order Adding Inbound International Expedited Services 3 to the Competitive Product List, Docket Nos. MC2010-13 and CP2010-12, December 22, 2009.

be consistent with 39 U.S.C. § 3642 and change the Mail Classification Schedule no later than August 20, 2010, as indicated in the attachment, in order to enable Canadian-origin dispatches for competitive services to be handled and rated according to the changes described above by the morning shift on Monday, August 23, 2010, when the service upgrade is planned to take effect.

Respectfully submitted,

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Mail Classification Schedule Change

* * * * *

- 2613 Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2010-14 and CP2010-13—Inbound Items Surface Parcel Post at Non-UPU Rates and Xpresspost-USA)

This agreement governs the exchange of inbound surface parcel post (Expedited Parcels) and Xpresspost from Canada to the U.S. Xpresspost is a Canadian service for documents, packets, and light-weight packages. In particular, the agreement provides standards, targets, performance incentives, and charges for delivery of inbound surface parcel post (Expedited Parcels) and Xpresspost. Beginning August 23, 2010, this agreement includes Expedited Parcels upgraded to Priority Mail service and subject to existing Xpresspost merchandise rates and service, along with residual items, received through December 31, 2010, which are rated and handled as Xpresspost documents and merchandise.

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ATTACHMENT 2

APPLICATION OF THE UNITED STATES POSTAL SERVICE FOR NON-PUBLIC TREATMENT OF MATERIALS

In accordance with 39 C.F.R. § 3007.21 and Order No. 225,⁹ the United States Postal Service (Postal Service) hereby applies for non-public treatment of certain materials filed with the Commission in this docket. The materials pertain to a classification change arising in connection with the Canada Post – United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Agreement). Financial information related to the classification change is being filed separately under seal with the Commission. The Postal Service hereby furnishes the justification required for this application by 39 C.F.R. § 3007.21(c) below.

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

The materials designated as non-public consist of information of a commercial nature that under good business practice would not be publicly disclosed. In the Postal Service's view, this information would be exempt from mandatory disclosure pursuant to 39 U.S.C. § 410(c)(2) and 5 U.S.C. § 552(b)(3) and (4).¹⁰ Because the portions of the materials that the Postal Service is applying to file only under seal fall within the scope of information not required to be publicly disclosed, the Postal Service asks the

⁹ PRC Order No. 225, Final Rules Establishing Appropriate Confidentiality Procedures, Docket No. RM2008-1, June 19, 2009.

¹⁰ In appropriate circumstances, the Commission may determine the appropriate level of confidentiality to be afforded to such information after weighing the nature and extent of the likely commercial injury to the Postal Service against the public interest in maintaining the financial transparency of a government establishment competing in commercial markets. 39 U.S.C. § 504(g)(3)(A). The Commission has indicated that "likely commercial injury" should be construed broadly to encompass other types of injury, such as harms to privacy, deliberative process, or law enforcement interests. PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, Mar. 20, 2009, at 11.

Commission to support its determination that these materials are exempt from public disclosure and grant its application for their non-public treatment.

(2) Identification, including name, phone number, and email address for any third-party who is known to have a proprietary interest in the materials, or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

In the case of the instant filing under seal, the Postal Service believes that the only third party with a proprietary interest in the materials is the foreign postal operator with whom the contract is made. The Postal Service has already informed Canada Post Corporation (Canada Post), in compliance with 39 C.F.R. § 3007.20(b), of the nature and scope of this filing and its ability to address its confidentiality concerns directly with the Commission. The Postal Service identifies Dave Eagles, Director, International Relations, Canada Post Corporation, as the appropriate contact on behalf of Canada Post. Mr. Eagles' telephone number is (613) 734-6043, and his email address is dave.eagles@canadapost.ca. Canada Post has requested that any communications regarding confidential treatment of these data be sent with a courtesy copy to Dennis Jarvis, General Manager, International Product Management, Canada Post Corporation. Mr. Jarvis's telephone number is (613) 734-8149, and his email address is dennis.jarvis@canadapost.ca.¹¹

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

¹¹ In the event of a request for early termination of non-public treatment under 39 C.F.R. § 3007.31, a preliminary determination of non-public status under 39 C.F.R. § 3007.32, or a request for access to non-public materials under 39 C.F.R. § 3007.40, the Postal Service notes, on Canada Post's behalf, that differences in the official observation of national holidays might adversely and unduly affect Canada Post's ability to avail itself of the times allowed for response under the Commission's rules. In such cases, Canada Post has requested that the Postal Service convey its preemptive request that the Commission account for such holidays when accepting submissions on matters that affect Canada Post's interests. A listing of Canada's official holidays can be found at <http://www.pch.gc.ca/pgm/ceem-cced/jfa-ha/index-eng.cfm>.

In connection with its Request filed in this proceeding, the Postal Service included financial workpapers. These materials were filed under seal. The Postal Service maintains that the financial information should remain confidential. The sealed financial workpapers protect commercially sensitive information such as underlying costs and assumptions, negotiated pricing, and cost coverage projections.

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

If the workpapers that the Postal Service determined to be protected from disclosure due to their commercially sensitive nature were to be disclosed publicly, the Postal Service considers that it is quite likely that it would suffer commercial harm. Information about negotiated pricing is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Competitors could use the information to assess the offers made by the Postal Service to foreign postal operators or other customers for any possible comparative vulnerabilities and focus sales and marketing efforts on those areas, to the detriment of the Postal Service. Additionally, foreign postal operators or other potential customers could use the information to their advantage in negotiating the terms of their own agreements with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material. The financial workpapers also include specific information such as costs, assumptions used in pricing decisions, the negotiated prices themselves, projections of variables, and contingencies to account for market fluctuations and exchange risks. All of this information is highly confidential in the business world. If this information were made public, the Postal

Service's competitors would have the advantage of being able to determine the absolute floor for Postal Service pricing. Unlike its competitors, the Postal Service is required to demonstrate that each negotiated agreement covers its attributable costs. Thus, competitors would be able to take advantage of the information to offer lower pricing to postal customers, while subsidizing any losses with profits from other customers. Eventually, this could freeze the Postal Service out of the relevant inbound delivery services markets.

Potential customers could also deduce from the rates provided in the financial workpapers whether additional margin for net profit exists. From this information, each foreign postal operator or customer could attempt to negotiate ever-decreasing prices, such that the Postal Service's ability to negotiate competitive yet financially sound rates would be compromised. Even the foreign postal operator that is the subject of the financial workpapers could use the information in the workpapers in an attempt to renegotiate its own rates by threatening to terminate its current agreement.

Price information in the financial spreadsheets also consists of sensitive commercial information of a foreign postal operator. Disclosure of such information could be used by competitors of the postal operator to assess the operators' underlying costs, and thereby develop a benchmark for the development of a competitive alternative.

(5) At least one specific hypothetical, illustrative example of each alleged harm;

Harm: Public disclosure of the prices in the financial workpapers would provide foreign postal operators or other potential customers extraordinary negotiating power to extract lower rates from the Postal Service.

Hypothetical: Canada Post's negotiated prices are disclosed publicly on the Postal Regulatory Commission's website. Another postal operator sees the prices and determines that there may be some additional profit margin between the rates provided to Canada Post and the statutory cost coverage that the Postal Service must produce in order for the agreement to be added to the competitive products list. The other postal operator, which was offered rates identical to those published in Canada Post's agreement, then uses the publicly available rate information to insist that it must receive lower rates than those the Postal Service has offered it, or it will not use the Postal Service for its inbound delivery needs.

Harm: Competitors could use performance information to assess vulnerabilities and focus sales and marketing efforts to the Postal Service's and Canada Post's detriment.

Hypothetical: The delivery standards information in the financial workpapers is released to the public. Another delivery service's employee monitors the filing of this information and passes the information along to its sales and marketing functions. The competitor then uses the Postal Service's performance targets as a concrete comparison point, advertising itself to potential customers as offering performance better than the Postal Service's.

Harm: Public disclosure of information in the financial workpapers and cost coverage information would be used by competitors and customers to the detriment of the Postal Service.

Hypothetical: A competing package delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website.

It analyzes the workpapers to determine what the Postal Service would have to charge its customers in order to meet its minimum statutory obligations for cost coverage and contribution to institutional costs. It then sets its own rates for products similar to what the Postal Service offers its customers below that threshold and markets its purported ability to beat the Postal Service on price for international delivery services. By sustaining this below-market strategy for a relatively short period of time, the competitor, or all of the Postal Service's competitors acting in a likewise fashion, would freeze the Postal Service out of one or more relevant international delivery markets.

Harm: Public disclosure of information in the financial workpapers would be used by Canada Post's competitors to its detriment.

Hypothetical: A competing international delivery service obtains a copy of the unredacted version of the financial workpapers from the Postal Regulatory Commission's website. The competitor analyzes the workpapers to assess Canada Post's underlying costs for the corresponding Canada Post products. The competitor uses that information as a baseline to negotiate with U.S. customs brokers and freight companies to develop lower-cost alternatives.

(6) The extent of protection from public disclosure deemed to be necessary;

The Postal Service maintains that the redacted portions of the materials filed non-publicly should be withheld from persons involved in competitive decision-making in the relevant market for international expedited and parcels products (including both private sector integrators and foreign postal operators), as well as their consultants and attorneys. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for this or similar products (including other postal operators) should

not be provided access to the non-public materials. This includes Canada Post with respect to all materials filed under seal except for information to which Canada Post already has access.

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

The Commission's regulations provide that non-public materials shall lose non-public status ten years after the date of filing with the Commission, unless the Commission or its authorized representative enters an order extending the duration of that status. 39 C.F.R. § 3007.30. .

(8) Any other factors or reasons relevant to support the application.

None.

Conclusion

For the reasons discussed, the Postal Service asks that the Commission grant its application for non-public treatment of the identified materials.