

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Tony L. Hammond, Vice Chairman;
Mark Acton;
Dan G. Blair; and
Nanci E. Langley

Canada Post–United States Postal Service
Contractual Bilateral Agreement for Inbound
Competitive Services
Minor Classification Change

Docket No. MC2010-33

ORDER ACCEPTING MINOR CLASSIFICATION CHANGES RELATED
TO CANADA POST–UNITED STATES POSTAL SERVICE CONTRACTUAL
BILATERAL AGREEMENT

(Issued August 20, 2010)

I. INTRODUCTION

The Postal Service filed a notice pursuant to 39 CFR 3020.90 and 3020.91 concerning classification changes to the Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (Bilateral Agreement). The Commission accepts the proposed classification changes and shall make conforming modifications to the draft Mail Classification Schedule (MCS).

II. POSTAL SERVICE FILING

The Bilateral Agreement, which was added to the competitive product list by Order No. 376,¹ covers parcels arriving in the United States by surface transportation and Xpresspost, a Canadian service for documents, packets, and light-weight packages. Governors' Decision No. 09-16.² Under the Bilateral Agreement, Canada Post may tender surface parcels and Xpresspost to the Postal Service at negotiated prices rather than the default prices set by the Universal Postal Union. *Id.*

On August 2, 2010, the Postal Service filed a notice, pursuant to 39 CFR 3020.90 *et seq.*, of a classification change concerning the Bilateral Agreement.³ Currently, surface parcel post tendered by Canada Post (Expedited Parcels) under the agreement is handled in the Postal Service's Parcel Post network. The Postal Service proposes that, as of August 23, 2010, surface parcels tendered by Canada Post would be handled as Priority Mail and be subject to the negotiated rates established for Xpresspost merchandise in the Bilateral Agreement. *Id.* at 2. Additionally, the Postal Service states a small volume of residual Xpresspost items would be accepted at the current Xpresspost merchandise and document rates until December 31, 2010. *Id.*⁴

¹ Docket Nos. MC2010-14 and CP2010-13, Order Concerning Bilateral Agreement with Canada Post for Inbound Competitive Services, December 30, 2009 (Order No. 376).

² See Docket Nos. MC2010-14 and CP2010-13, Request of the United States Postal Service to Add Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services to the Competitive Product List, and Notice of Filing (Under Seal) the Enabling of Governors' Decision and Agreement, November 25, 2009, 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, November 18, 2009 (Governors' Decision No. 09-16). The agreement became effective January 1, 2010 and is scheduled to expire December 31, 2011, unless terminated earlier by either party on 90 days' prior notice. *Id.*, Attachment 3.

³ 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 (Notice).

⁴ The Postal Service indicates that the treatment of residual Xpresspost items is necessary to accommodate the use of existing Xpresspost mailing labels through the end of calendar year 2010. *Id.* at 3.

To give effect to these changes, the Postal Service submitted a proposed modification to the current provision in the draft Mail Classification Schedule (MCS).⁵ The Postal Service indicates that beginning January 1, 2011, the classification will only include Expedited Parcels subject to rates for Xpresspost merchandise under the Bilateral Agreement. *Id.*⁶

In support of its proposal, the Postal Service asserts that the proposed classification language is consistent with Governors' Decision No. 09-16. It suggests that given the current and future mail flows under the agreement, a separate stand-alone classification may be appropriate for the Bilateral Agreement. Lastly, it contends that the proposed changes do not result in the addition, removal or transfer of a product to the product list, and thus do not require a request filed pursuant to 39 CFR 3020.31 *et seq.* *Id.* at 3-4.

The Postal Service contends that the financial effects of the minor classification change are in compliance with 39 U.S.C. 3633(a). *Id.* It has provided financial supporting documentation under seal to demonstrate the impact of the upgrade associated with Expedited Parcels. *Id.*, Attachment 2.

The Postal Service states that in future filings, it intends to provide notice of another service upgrade for items currently received as Xpresspost. *Id.* at 5. Beginning August 23, 2010, Xpresspost items (other than residual Xpresspost items) received during the remainder of calendar year 2010, will be charged the Tier 1 inbound Express Mail Service (EMS) rates currently paid by members of the EMS Cooperative. *Id.* To give effect to this change, the Postal Service intends to list Canada as a Tier 1 country in the next quarterly filing of the EMS country listing, due October 1, 2010. Such Xpresspost items will be handled in the Express Mail network and, as a result, the

⁵ *Id.* at 2-3 and Attachment 1. The Canada Post refers to surface parcels by the service name "Expedited Parcels," a term the Postal Service proposes to include in the revised provision for clarity. *Id.* at 2-3.

⁶ The Postal Service notes that the proposed language does not address additional changes to the Xpresspost service it intends to handle in a separate filing.

Postal Service will, for reporting purposes, aggregate Canada-origin volumes with other EMS volumes through Quarter 1 of fiscal year 2011. *Id.* For Xpresspost items handled in the Express Mail network during calendar year 2011, the Postal Service indicates that it intends to file a separate notice with the Commission to the extent that the calendar year 2011 inbound EMS rates to be negotiated with Canada Post differ from the Tier 1 rates charged other postal operators. *Id.* at 6.

III. COMMENTS

In Order No. 511, the Commission established Docket No. MC2010-33 for consideration of matters identified in the Postal Service's Notice, appointed a Public Representative, and provided the public with an opportunity to comment.⁷

Comments were filed by the Public Representative.⁸ No other interested person submitted comments. The Public Representative states that the Postal Service has complied with the requirements of 39 CFR 3020.91 in its filing. *Id.* at 1. Additionally, he states that the Postal Service's filing includes documentation to support its request in compliance with 39 U.S.C. 3642. *Id.* at 2. He also maintains that the Postal Service has provided adequate justification for the filing of supporting documents under seal. *Id.* The Public Representative concludes that the Postal Service's filing presents a minor modification to the bilateral agreement with Canada Post which comports with applicable provisions of title 39. *Id.* at 3.

⁷ Notice and Order Concerning Classification Changes, August 9, 2010 (Order 511).

⁸ Public Representative's Comments in Response to United States Postal Service Notice of Proposed Minor Classification Change Concerning Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services, August 17, 2010 (Public Representative Comments). The Public Representative filed an accompanying Motion of the Public Representative for Late Acceptance of Comments on United States Postal Service Notice of Proposed Minor Classification Change Concerning Canada Post–United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services, August 17, 2010. The motion is granted.

IV. ANALYSIS

The Postal Service proposes classification changes concerning the Bilateral Agreement for Inbound Competitive Services involving rates for inbound surface parcels (Expedited Parcels). Under the proposal, effective August 23, 2010, inbound surface parcels will be subject to rates for Xpresspost merchandise established in the current Bilateral Agreement. In addition, for the period August 23, 2010 through December 31, 2010, residual Xpresspost items will be rated and handled as Xpresspost under the Bilateral Agreement.

Rule 3020.90 provides that the Postal Service is to assure that product descriptions in the MCS accurately represent its current offerings. Notices filed pursuant to rule 3020.90 *et seq.* are limited to changes in the MCS that are relatively minor in nature and that do not entail modifying either the market dominant or the competitive product list.

The Postal Service's proposal does not constitute a modification of the product lists. Rather, it involves a change in rates precipitated by Canada Post's decision to no longer dispatch parcels for entry in the surface network. As a consequence, service for Expedited Parcels will be provided at existing negotiated rates for Xpresspost in lieu of the negotiated surface parcel post rates. Xpresspost items will be rated and handled as Express Mail as a result of adding Canada as a Tier 1 country in the EMS country listing beginning August 23, 2010.

Upon review of the proposal and the comments received, the Commission finds that the proposed changes are in accordance with 39 CFR 3020.90 *et seq.* and are not inconsistent with 39 U.S.C. 3642. The Commission accepts the classification changes specified in the Postal Service's Notice, and shall make conforming modifications to the draft MCS.

It is ordered:

The Commission finds that the proposed changes are in accordance with 39 CFR 3020.90 *et seq.* and is not inconsistent with 39 U.S.C. 3642.

By the Commission.

Shoshana M. Grove
Secretary