

ORDER NO. 1417

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

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton;  
Tony Hammond; and  
Robert G. Taub

Competitive Products Price Changes  
Rates of General Applicability

Docket No. MC2012-30

ORDER APPROVING EXPRESS MAIL INTERNATIONAL  
PADDED FLAT RATE ENVELOPE OPTION

(Issued July 25, 2012)

I. INTRODUCTION

The Postal Service proposes to add Express Mail International (EMI) Padded Flat Rate Envelope within the existing EMI product under the Commission's rules for minor modifications of the Mail Classification Schedule (MCS).<sup>1</sup> The rate for the new option is identical to that of existing EMI Flat Rate Envelope options.

For the reasons discussed below, the Commission approves the planned change, and will reflect the classification changes in the draft MCS. The Notice was filed pursuant to 39 CFR 3020 subpart E, rules intended for minor modifications of the

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<sup>1</sup> Notice of United States Postal Service of Classification Changes, June 25, 2012 (Notice). The revised MCS language appears in Attachment 1.

MCS, e.g., to correct and clarify product list descriptions. While the proposed change is relatively minor, it nonetheless constitutes a price change, offering a new service albeit at a rate for a similar service, and should have been filed pursuant to 39 CFR part 3015.

## II. THE POSTAL SERVICE'S FILING

*Background.* EMI currently includes two options, the Flat Rate Envelope and the Legal Flat Rate Envelope. On June 25, 2012, the Postal Service filed notice with the Commission of its interest in adding a third offering identified as "EMI Padded Flat Rate Envelope." The Notice, filed pursuant to 39 CFR 3020.90 and 3020.91, provides a description of the change and conforming MCS language. *Id.* Attachment 1.

*Rationale for planned change and minor classification change status.* The Postal Service cites the following factors in support of the planned change and application of the rules for minor classification changes:

- the dimensions of the Padded Flat Rate Envelope and the Flat Rate envelope (12.5 inches by 9.5 inches) are identical;
- the prices are the same (\$29.25 to Canada and \$38.00 to all other countries); and
- all standards (such as a maximum weight limit of 20 pounds) apply equally to the three options.

Notice at 1.

*Purpose; consistency with statute.* The Postal Service says the purpose of the change is to increase customers' EMI Flat Rate Envelope options. *Id.* at 1.

It asserts that the changes are consistent with 39 U.S.C § 3642 and should be incorporated into the MCS. *Id.* at 2.

*Domestic Express Mail filing.* The Postal Service notes that one day before filing this case, it had filed a similar request for a new Express Mail Padded Flat Rate Envelope. That request, captioned Docket No. CP2012-39, was submitted under

39 CFR part 3015, which prescribes rules for changes in rates for competitive products.<sup>2</sup> *Id.* at 2. The Commission recently approved that change.<sup>3</sup>

### III. NOTICE AND REQUEST FOR SUPPLEMENTAL INFORMATION ON THE PROPOSAL'S FILING STATUS

In Order No. 1386, the Commission issued notice of the Postal Service's filing, appointed a Public Representative, and provided interested persons with an opportunity to comment. It also asked the Postal Service to respond to an information request on the appropriateness of treating the instant proposal as a minor classification change, instead of employing the approach used for the new domestic Express Mail Padded Flat Rate Envelope proposal in Docket No. CP2012-39.<sup>4</sup> Order No. 1386 at 1-2.

*Postal Service response.* The Postal Service contends the proposed addition of EMI Padded Flat Rate Envelope "does not effect a change in rates of general applicability" because "the price for the EMI Padded Flat Rate Envelope is the same as the price for the current EMI Flat Rate Envelope and EMI Legal Flat Rate Envelope,...."<sup>5</sup> In addition, it asserts that the filing in Docket No. CP2012-39 is distinguishable because, unlike with EMI Regular, Padded, and Legal Flat Rate Envelopes, the pricing for Express Mail Regular, Padded, and Legal Flat Rate Envelopes "may differentiate in future price adjustments." *Id.* at 2. Based on these considerations, it concludes: "As a result, a filing similar to that made in Docket No. CP2012-39 was not made in this docket with respect to the proposed addition of EMI Padded Flat Rate Envelope." *Id.*

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<sup>2</sup> Docket No. CP2012-39, Notice of the United States Postal Service of Changes in Rates of General Applicability for a Competitive Product, Established in Governors' Decision No. 12-1, June 22, 2012.

<sup>3</sup> Order No. 1398, Order Approving the Use of Express Mail Padded Flat Rate Envelopes and Related Prices, July 11, 2012.

<sup>4</sup> Notice and Order on Postal Service's Filing Affecting Express Mail International Padded Flat Rate Envelope, June 28, 2012 at 1-2 (Order No. 1386).

<sup>5</sup> Response of the United States Postal Service to Information Request in Order No. 1386, July 5, 2012 at 1-2 (Postal Service Response).

#### IV. COMMENTS

The Public Representative filed comments supporting the planned change and application of the minor classification change rules. No other comments were filed.

On the issue of filing status, the Public Representative agrees with the Postal Service's rationale that the Governors' future pricing plans is one factor to consider in determining whether a proposal involves "a change in rates of general applicability" triggering section 3015.<sup>6</sup> He observes, in this regard, that the Postal Service explains that while the domestic Express Mail Padded Flat Rate Envelope in Docket No. CP2012-39 initially will be offered at the same prices available for Regular and Legal Flat Rate Envelopes, the pricing for those items may differentiate in future rate adjustments. *Id.* at 3. He notes the absence of a Governors' Decision in the instant filing, and observes that the Postal Service has specifically stated its plans for the international options "to have the same price." *Id.*

The Public Representative concludes that the addition of the Padded Flat Rate Envelope to the EMI product does not constitute modification of the MCS product as defined in section 3020.30 of the Commission's rules, does not constitute a change in rates of general applicability, and is consistent with 39 U.S.C. § 3642 and 39 CFR 3020.90 and 3020.91. *Id.* at 2-3. In particular, he says 39 CFR 3020.30 is inapplicable because the Notice does not propose to add a product to the MCS. *Id.* at 3. He adds:

No plans to differentiate rates are in evidence and the Postal Service has specifically stated it plans for the options 'to have the same price.' Nevertheless, the Postal Service would not be precluded necessarily from adjusting rates as needed. If, in the future, the Postal Service decides to differentiate the EMI envelope rates, it may file for a change in rates of general applicability to establish a separate rate category.

*Id.*

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<sup>6</sup> Public Representative Comments on Addition of Padded Flat Rate Envelope to Express Mail International (EMI) Product Category, July 11, 2012 at 2 (PR Comments).

The Public Representative asserts: “This is a minor modification to the EMI product. The new padded envelope flat rate option should have little or no effect on the overall cost coverage of EMI.” *Id.* n.5.

## V. COMMISSION ANALYSIS

The Commission has reviewed the Notice, the Postal Service Response, the PR Comments, and the similar domestic filing in Docket No. CP2012-39. The Commission agrees that the EMI Padded Flat Rate Envelope will provide customers with a new mailing option and that it is identical in terms of price and standards to the existing EMI Flat Rate Envelope options. Notwithstanding the relatively minor nature of the proposed change, it represents a price change not merely a minor classification change and should have been filed under 39 CFR part 3015.

The Notice was filed pursuant to rule 3020.91 which provides streamlined filing for certain MCS revisions under limited conditions:

The Postal Service shall submit *corrections to product descriptions in the Mail Classification Schedule* that do not constitute a proposal to modify the market dominant product list or the competitive product list as defined in § 3020.30 by filing notice of the proposed change with the Commission no later than 15 days prior to the effective date of the proposed change.

(Emphasis supplied.)<sup>7</sup>

Section 3020.30 states: “For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.” Thus, a “modification” is limited to a “product level” change, not a change within the product.

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<sup>7</sup> Filings under 39 CFR 3030, subpart E do not require documentation. The standard of review is whether the proposal is “not inconsistent with 39 U.S.C. 3642.” 39 CFR 3020.93. Filings under 39 CFR part 3015 require documentation and are reviewed for consistency with 39 U.S.C. § 3633. See 39 CFR 3015.7. The Commission agrees with Public Representative’s observation that the addition of the EMI Padded Flat Rate Envelope will not have a material effect on EMI’s cost coverage. See PR Comments at 3, n.5.

In this instance, the Postal Service is proposing a relatively modest change (a padded envelope) as an option below the “product” level. Moreover, it proposes adding the new option at an existing rate. In Docket No. CP2012-39, the Postal Service proposed essentially the same change for domestic Express Mail, adding the padded envelope option at the same rate as the existing Regular and Legal Flat Rate Envelope options. Significantly, and correctly in the Commission’s view, that filing was made pursuant to 39 CFR part 3015. The Postal Service contends that its future pricing plans for the domestic and international padded envelope justify the different regulatory filings. Postal Service Response at 2. The distinction is not persuasive.

While the change may be characterized as minor and potentially amenable for filing under 39 CFR 3020 subpart E, the proposal cannot fairly be characterized as a “correction” to a product description. It does not simply involve a “mistaken” product description that should be addressed in the interests of maintaining an accurate MCS. Nor is it a clarification of an existing description. Rather, both filings represent a change in rates, regardless of the Postal Service’s future pricing plans for these mailing options. As the Public Representative notes, nothing precludes the Postal Service from differentiating prices among these services in the future.

The Commission recognizes that filings under 39 CFR 3020 subpart E have been enlarged somewhat beyond a strict interpretation of the rules. In general, the process has worked reasonably well, although the Commission has observed that it may be appropriate to amend its rules accordingly. For example, in Docket No. MC2011-28, where certain changes affecting Lightweight Commercial Parcels were in issue and the Postal Service opted for rule 3020.90 treatment, the Commission said: “...for proposals like this to be effectively analyzed..., the Postal Service must provide more information about the proposed changes, similar to the level of information it provided in its subsequent filings in this case. Order No. 835 at 7-8. See *also* Order No. 667, Docket No. MC2011-5, Order Approving Mail Classification Changes, February 8, 2011 at 5. By this discussion, the Commission intends to make it clear that where ambiguity exists as to the nature of the change and the rules of practice do not provide a clear filing

choice, public transparency would be better served if the Postal Service filed under 39 CFR part 3015, as it did for the related domestic Padded Flat Rate Envelope filing. Notwithstanding that the Notice was filed under 39 CFR 3020.90 *et seq.*, the Commission approves the proposed change. It finds that the price of the new EMI Padded Flat Rate Envelope options does not appear to prohibit the EMI product from complying with section 3633(a)(2) or preclude competitive products as a whole from complying with sections 3633(a)(1) and 3633(a)(3). Therefore, the related classification change will be reflected in the draft MCS.

*It is ordered:*

1. The Postal Service's planned price change for the Express Mail International Padded Flat Rate Envelope appears to comply with 39 U.S.C. 3633(a) and 39 CFR 3015.7.
2. The Postal Service shall promptly inform the Commission of the effective date of the revision to the MCS reflecting the addition of Express Mail International Padded Flat Rate Envelope.

By the Commission.

Shoshana M. Grove  
Secretary