



May 6, 2013

Honorable Shoshana Grove  
Secretary  
Postal Regulatory Commission  
901 New York Avenue, NW, Suite 200  
Washington, DC 20268-0001

Dear Ms. Grove:

Pursuant to 39 U.S.C. § 407(d)(2), the U.S. Postal Service (Postal Service) is providing copies of an Amendment to the Canada Post – USPS Contractual Bilateral Agreement 2012-2013 and an associated attachment and annex. The Postal Service has marked the non-public versions of the documents as "Confidential" and "Non-Public" because the documents contain information considered confidential and commercially sensitive by the affected postal operators and the Postal Service.

The Postal Service considers certain portions of the documents to be protected by 39 U.S.C. § 410(c)(2) and thereby not subject to mandatory disclosure under the Freedom of Information Act (FOIA). Further, the documents contain the commercial information of several postal operators, and as such, certain portions of the instruments are subject to protection under Exemption 4 of the FOIA. Consequently, we have attached an application for non-public treatment of these documents under 39 C.F.R. § 3007.21. In addition, we respectfully request that the Postal Regulatory Commission coordinate with us in the event that the documents become subject to a FOIA request, so that we can engage in appropriate consultations with the affected postal operators.

Please feel free to contact me if further information would be helpful.

Sincerely,

A handwritten signature in blue ink that reads "Anthony F. Alverno".

Anthony F. Alverno  
Chief Counsel, Global Business &  
Service Development

Enclosure

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

In accordance with 39 C.F.R. § 3007.21, the United States Postal Service (Postal Service) hereby applies for non-public treatment of the enclosed Amendment To The Canada Post — USPS Contractual Bilateral Agreement 2012-2013 (Amendment). The Postal Service provides the Amendment to the Postal Regulatory Commission (Commission) in accordance with 39 U.S.C. § 407(d). The Amendment concerns the acquisition of certain services from Canada Post. As such, it constitutes a commercial agreement with an agency of a foreign government. The unredacted Amendment is being filed under seal, while a redacted copy is included as an enclosure to this transmittal. 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);**

Information of a commercial nature, which under good business practice would not be publicly disclosed, as well as third party business information, is not required to be disclosed to the public. 39 U.S.C. § 410(c)(2); 5 U.S.C. § 552(b)(3) and (4). 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).<sup>1</sup> Because the portions of materials filed non-publicly fall within the scope of information not required to be publicly disclosed, the Postal Service asks the 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 e-mail 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 agreements such as the one transmitted here, the Postal Service believes that the postal operator that has signed the document is the only third party with a proprietary interest in the materials. The Postal Service identifies Terry Dunn, General Manager, International Relations, Canada Post Corporation (CPC), as the appropriate contact on behalf of Canada Post. Mr. Dunn's telephone number is (613) 734-8894, and his email address is terry.dunn@canadapost.ca. Canada Post has requested that any communications regarding confidential treatment of these data be sent with a courtesy copy to Ewa Kowalski, Manager, International Mail Settlement, Canada Post Corporation. Ms. Kowalski's telephone number is (613) 734-6201, and her email address is ewa.kowalski@canadapost.ca.<sup>2</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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

The Postal Service has already informed the postal operator, in compliance with 39 C.F.R. § 3007.20(b), about the nature and scope of this filing and about the postal operator's ability to address any confidentiality concerns directly with the Commission.

**(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;**

The Postal Service is transmitting an amendment to its bilateral contractual agreement with Canada Post concerning services that Canada Post will provide for the return of merchandise to the Postal Service for delivery to merchants in the United States. The Amendment defines the terms and conditions under which Canada Post will provide these services, including the rates that Canada Post will charge the Postal Service and accounting information.

The Postal Service maintains that the redacted portions of the documents should remain confidential. Some of the material redacted from the Amendment is marked because disclosure of it would enable a competitor to deduce the nature of redacted commercially sensitive information.

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

If the information that the Postal Service determined to be protected from disclosure due to its commercially sensitive nature were to be disclosed publicly,

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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>.

the Postal Service considers that it is quite likely that it would suffer commercial harm. This information is commercially sensitive, and the Postal Service does not believe that it would be disclosed under good business practices. Parcel delivery competitors in the United States could use the terms of the agreement to negotiate more favorable rates for similar services with Canada Post or could use the rates offered by Canada Post to set their own more favorable rates to U.S. merchants for similar services. Since the U.S. parcel delivery service competitors are not required to cover their costs for each product they offer, they could offer similar services at below cost to unfairly compete with the Postal Service. The Postal Service considers these to be highly probable outcomes that would result from public disclosure of the redacted material.

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

Harm: Parcel delivery competitors in the United States could use the terms of the agreement to negotiate more favorable rates for similar services with Canada Post.

Hypothetical: The terms of the agreement, including the manner in which the service is provided, the rates, and the terms and conditions under which it is offered are made public on the Commission's website. A competing U.S. parcel delivery provider reviews the information, which is information that would otherwise be unavailable. The competitor analyzes the information and approaches Canada Post with a proposal for Canada Post to provide it similar services. Because it has "inside" information, the competitor would be better prepared to predict the lowest rate that it could negotiate with Canada Post,

given the conditions under which the service were to be provided and would be better prepared to take a hard line in its negotiations.

Harm: U.S. parcel delivery competitors could use the rates offered by Canada Post to set their own more favorable rates to U.S. merchants for similar services.

Hypothetical: The commercially confidential information contained in the contract amendment is published on the Commission's website. U.S. parcel delivery service companies analyze the contract and determine, based on information in the contract and other reasonable business assumptions, what the likely floor is for the Postal Service's pricing for the product. Then the competitor is able to promote its own similar services at below what it believes to be 100 percent cost coverage to increase its market share and force the Postal Service to retreat from entry into the market.

In addition to promoting a lower price for its services, the competitor could also use the terms and conditions of the product as described in the agreement between Canada Post and the Postal Service to differentiate its own products or change the nature of its services to give them an appearance of being a better quality or value for price than the service offered by the Postal Service.

**(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, as well as their consultants and attorneys, except for the foreign postal operator that is a party to the agreement

and that therefore already has access to this information. Additionally, the Postal Service believes that actual or potential customers of the Postal Service for similar products should not be provided access to the non-public materials.

**(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.

**CONFIDENTIAL**

**AMENDMENT TO THE "CANADA POST – USPS CONTRACTUAL  
BILATERAL AGREEMENT 2012-2013"**

This Amendment modifies the Agreement between the United States Postal Service (USPS) and Canada Post Corporation (the "CPC-USPS bilateral"), signed by the USPS on December 20, 2011, and by Canada Post Corporation on December 21, 2011 pursuant to article 30 of the CPC-USPS bilateral.

This Amendment modifies the Agreement between the United States Postal Service (USPS) and Canada Post Corporation in the following ways:

1. Creation of new Attachment 9 "Agreement on the Exchange of International Merchandise Return Service between the U.S. Postal Service and Canada Post" and Appendix A "Rates" to Attachment 9 (the "Agreement" or "Attachment 9"). The parties thereafter agree to incorporate in the Bilateral Agreement this new Attachment 9 which establishes mutually agreed terms and conditions for the International Merchandise Return Service between the USPS and CPC and which will govern the service thereafter.
2. Amend Article 29 to add Attachment 9 "Agreement on the Exchange of International Merchandise Return Service between the U.S. Postal Service and Canada Post" to the list of attachments appearing there.
3. This Amendment shall come into force on the later of the two dates on which it is signed by the Parties' representatives below, and it shall remain in effect for the same term as the CPC-USPS bilateral.
4. The Parties may execute this Amendment in one or more counterparts (including by facsimile or by electronic means such as .pdf format). Not all Parties need be signatories to the same document. All counterpart signed documents shall be deemed an original and one instrument.

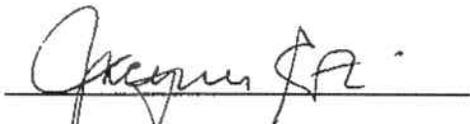
All other terms and conditions of the Agreement shall remain in force.

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IN WITNESS WHEREOF, the Parties agree to be bound as of the latest date of signature to the terms and conditions of this Amendment.

CANADA POST CORPORATION

U.S. POSTAL SERVICE



Mr. Jacques Côté  
Group President Physical Delivery Network



Ms. Giselle Valera  
Managing Director, Global Business and  
Vice President

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March 13, 2013

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March 13, 2013

**ATTACHMENT 9**  
**Agreement on the Exchange of International Merchandise Return Service  
between the U.S. Postal Service and Canada Post**

*Article 1: Purpose of the Agreement*

The purpose of the Agreement shall be to establish mutually agreed terms and conditions for the International Merchandise Return service, specifically the return of northbound U.S. origin items from Canada Post Corporation (CPC) to United States Postal Service (USPS) and within the framework of the Canada Post-United States Postal Service Contractual Bilateral Agreement 2012-2013.

*Article 2: Precedence of Agreements*

Terms of agreements shall be applied in the following order of precedence when interpreting this Agreement in the case of doubt, ambiguity, conflict or dispute:

1. Specific processes, conditions, and rates set forth in this Attachment 9 and its annex.
2. Terms of the Canada Post Corporation—United States Postal Service Contractual Bilateral Agreement effective January 1, 2012 through December 31, 2013.

*Operational Procedures of the International Merchandise Return Service (IMRS)*

1. U.S. Merchant shall send goods to customer in Canada using USPS or any other northbound carrier.

2. Customer in Canada wishing to return an item shall contact U.S. Merchant and follow the Merchant's instructions for requesting return service and label. The instructions may vary by Merchant but must require the customer to submit detailed item information to the Merchant

[REDACTED]

3. The Merchant shall authorize the return and acquire return label by accessing [REDACTED]

[REDACTED]

4. [REDACTED] sends the label data [REDACTED] for the purpose of obtaining a unique CPC barcode for each label generated.

5.

[REDACTED]

6. U.S. Merchant shall provide by electronic means (e-mail, pdf download etc.) the label to the customer in Canada with the Canada Border Services Agency (CBSA) Informal Adjustment Request form B2G.

7. U.S. Merchant's label shall list deposit instructions and specify that customers in Canada must deposit the returns at Canada Post Offices only using the label provided.

8. The IMRS items will be processed [REDACTED] with the weight and dimensions being verified by CPC sortation equipment. [REDACTED]

9. The IMRS items shall be dispatched and returned to USPS [REDACTED]

10. If the customer in Canada wishes to apply for a refund or adjustment on customs duties he or she paid upon import the customer will need to submit CBSA Informal Adjustment Request form B2G and will be the party responsible for the provision of any supporting documentation requested by CBSA.

International Merchandise Return Service Rates

Annex 1 contains the 2013 calendar year rates. [REDACTED]

Pay for Performance

IMRS will be included in the [REDACTED] IMRS items will be addressed to USPS Postage Due Units (PDU) where they will receive an [REDACTED] traditionally used in performance measurement. [REDACTED]

In the future, the Parties will explore using [REDACTED] for this product.

International Merchandise Return Service Billing

The Merchant must make arrangements with the USPS in advance in order to avail itself of this service.

USPS will be invoiced monthly for the total labels produced by the CPC shipping systems at the request of USPS-authorized U.S. Merchants; Current USPS - CPC monthly invoice payment principles and procedures for International Mail Settlement will apply. [REDACTED]

USPS/CPC Settlement

1. The standard USPS/CPC settlement process for IMRS items returned as Canadian-origin Expedited - USA parcels will be applied.

[REDACTED] beginning 90 days following the first invoice for IMRS items. [REDACTED]

[REDACTED]

After the initial and first quarter data is available, the parties will establish a [REDACTED] for discrepancies and [REDACTED]. [REDACTED]

[REDACTED]

3. Adjustments will be managed via the regular USPS CPC Terminal Dues invoicing process, initially once per year using the 13th invoice.

USPS and CPC Customer Service Support for Inquiries, Claims and Liability

1. One quarter after launching IMRS, CPC and USPS shall work together to determine the success of the IMRS product based on user feedback and the rate of IMRS adoption.
2. At that time, CPC and USPS shall make the determination [REDACTED] including the ability to inquire and file claims regarding lost or damaged IMRS items. Until this determination is made, [REDACTED] USPS merchants by CPC.
3. [REDACTED], USPS and CPC shall work together to determine the rules of liability for IMRS and the appropriate inquiry and claims process.

Future Evaluation of the IMRS Service

In addition to future evaluations for enhancements mentioned in the sections regarding settlement pay for performance and customer service for claims aspects, CPC and USPS shall also jointly review the operational parameters to this service to determine if changes could be made to:

1. ensure and improve ease of accounting;
2. ensure the IMRS' unique features do not adversely impact performance measurement of the other products and services contained in the bilateral agreement;
3. consider when the use of dedicated [REDACTED] will become necessary; and,
4. assess and implement effective and appropriate adaptation to be able to harmonize with any merchandise return regulations being promulgated by the Universal Postal Union.

### Attachment 9 - Annex 1

#### International Merchandise Return Service Rates - 2013

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