

Rules and Regulations

Federal Register

Vol. 74, No. 23

Thursday, February 5, 2009

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1400

RIN 0560-AH85

Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule; reopening and extension of comment period.

SUMMARY: The Commodity Credit Corporation (CCC) published an interim rule on December 29, 2008 (73 FR 79267–79284), revising rules about payment limitation and payment eligibility for Farm Programs as required by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill). The 2008 Farm Bill provided new eligibility requirements based on annual income, sources of income, and type of entity. The Commodity Credit Corporation (CCC) is reopening and extending the comment period for the interim rule to give the public more time to provide input and recommendations on the interim rule. The original comment period closed on January 28, 2009, and CCC is reopening and extending it for 60 days from the date of this notice. While the interim rule became effective on December 23, 2008, CCC is extending the comments period by 60 days on the amendments to the regulations that will apply to 2009 and subsequent crop, program, or fiscal year benefits for programs subject to the provisions in our regulations.

DATES: We will consider comments that we receive by April 6, 2009.

ADDRESSES: We invite you to submit comments on the interim rule. In your comment, include the volume, date, and page number of this issue of the **Federal**

Register. You may submit comments by any of the following methods:

- *E-mail:*

Dan.McGlynn@wdc.usda.gov.

- *Fax:* (202) 690–2130.

- *Mail:* Dan McGlynn, Acting Director, Production, Emergencies and Compliance Division, FSA, U.S. Department of Agriculture (USDA), Stop 0517, Room 4754, 1400 Independence Ave., SW., Washington, DC 20250–0517.

- *Hand Delivery or Courier:* Deliver comments to the above address.

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Comments may be inspected at the mail address listed above between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available through the Farm Service Agency (FSA) home page at <http://www.fsa.usda.gov/>.

FOR FURTHER INFORMATION CONTACT: Dan McGlynn, Acting Director, Production, Emergencies and Compliance Division, FSA, USDA, Stop 0517, 1400 Independence Ave., SW., Washington, DC 20250–0517. Telephone: (202) 720–3463. Electronic mail:

Dan.McGlynn@wdc.usda.gov. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Background

On December 29, 2008, CCC published an interim rule titled “Farm Program Payment Limitation and Payment Eligibility for 2009 and Subsequent Crop, Program, or Fiscal Years” in the **Federal Register** (73 FR 79267–79284). CCC revised regulations as required by the 2008 Farm Bill (Pub. L. 110–246) to make changes in payment eligibility, payment attribution, maximum income limits, and maximum dollar benefit amounts for participants in CCC-funded programs. The interim rule amended the regulations to ensure that program payments and benefits are issued only to those persons and entities that meet all eligibility requirements, that a program participant does not receive any program payment above the maximum allowable benefit amount, and that applicable payments are not

made to anyone whose average adjusted gross income exceeds the maximum dollar amounts established by the 2008 Farm Bill. The interim rule applies to 2009 and subsequent crop, program, or fiscal year benefits for programs subject to the provisions in our regulations.

This reopening and extension of comment period is to give the public more time to provide input and to make recommendations on the interim rule. With this extension, the public may continue to submit comments until April 6, 2009 for this rule spanning the 2009 through 2012 crop years. Crop year 2009 is already in effect and no further comments in regards to crop year 2009 will be accepted after the original January 28, 2009 deadline.

Signed in Washington, DC, on January 28, 2009.

Dennis J. Taitano,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E9–2475 Filed 2–4–09; 8:45 am]

BILLING CODE 3410–05–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–13 and CP2009–17; Order No. 172]

Domestic Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail & Priority Mail Contract 3 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a recent Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective February 5, 2009, and is applicable beginning January 16, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 219 (January 5, 2009).

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 3 to the

Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On December 19, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail & Priority Mail Contract 3 to the Competitive Product List.¹ The Postal Service asserts that the Express Mail & Priority Mail Contract 3 product is a competitive product "not of general applicability" within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009-13.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009-17.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Express Mail & Priority Mail Contract 3 and certification of the Governors' vote;² (2) a redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;³ (3) requested changes in the Mail Classification Schedule product list;⁴ (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁵ and (5) certification of compliance with 39 U.S.C. 3633(a).⁶

In the Statement of Supporting Justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *See id.* Attachment E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision and the unredacted Express Mail & Priority Mail Contract 3, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain confidential. *Id.* at 2-3.

In Order No. 158, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁷

II. Comments

Comments were filed by the Public Representative.⁸ No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing complies with applicable Commission rules of practice and procedure, and concludes that the Express Mail & Priority Mail Contract 3 agreement comports with the requirements of title 39. Public Representative Comments at 4. He further states that the agreement appears beneficial to the general public. *Id.* at 1.

The Public Representative notes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 3.

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal that accompanies it, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Express Mail & Priority Mail Contract 3 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

⁷ PRC Order No. 158, Notice and Order Concerning Express Mail & Priority Mail Contract 3 Negotiated Service Agreement, December 23, 2008 (Order No. 158).

⁸ Public Representative Comments in Response to United States Postal Service Request to Add Express Mail & Priority Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, January 5, 2009 (Public Representative Comments).

Product list assignment. In determining whether to assign Express Mail & Priority Mail Contract 3 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment D, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Express Mail & Priority Mail Contract 3 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & Priority Mail Contract 3 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service presents a financial analysis showing that Express Mail & Priority Mail Contract 3 results in cost savings while ensuring that the contract covers its attributable costs, does not result in

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, December 19, 2008 (Request).

² Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract is not risk free, but concludes that the risks are manageable.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

subsidization of competitive products by market dominant products, and increases contribution from competitive products.

The Commission notes that in evaluating costs under a prospective contract compared to the average, the Postal Service should take into account all departures from average cost that may be due to services provided under the contract. The failure to do so, while having no material effect on the underlying financial analysis of the contract in this instance, hampers the timely review of the Postal Service's financial analysis. See PRC Order No. 138, November 20, 2008, at 6–7.

Based on the data submitted, the Commission finds that Express Mail & Priority Mail Contract 3 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of the proposed Express Mail & Priority Mail Contract 3 indicates that it comports with the provisions applicable to rates for competitive products.

The Postal Service shall promptly notify the Commission if the contract terminates earlier than 3 years from the effective date of the contract. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Express Mail & Priority Mail Contract 3 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this order.

IV. Ordering Paragraphs

It is Ordered:

1. Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission if the contract terminates earlier than the 3-year term as discussed in this order.

3. The Secretary shall arrange for the publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

Issued January 16, 2009.

By the Commission.

Steven W. Williams,
Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise Appendix A to subpart A of part 3020—Mail Classification Schedule to read as follows:

Appendix A to Subpart A of Subpart A of Part 3020—Mail Classification Schedule

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail

Single-Piece Letters/Postcards

Bulk Letters/Postcards

Flats

Parcels

Outbound Single-Piece First-Class Mail

International

Inbound Single-Piece First-Class Mail

International

Standard Mail (Regular and Nonprofit)

High Density and Saturation Letters

High Density and Saturation Flats/Parcels

Carrier Route

Letters

Flats

Not Flat-Machinables (NFM)/Parcels

Periodicals

Within County Periodicals

Outside County Periodicals

Package Services

Single-Piece Parcel Post

Inbound Surface Parcel Post (at UPU rates)

Bound Printed Matter Flats

Bound Printed Matter Parcels

Media Mail/Library Mail

Special Services

Ancillary Services

International Ancillary Services

Address List Services

Caller Service

Change-of-Address Credit Card

Authentication

Confirm

International Reply Coupon Service

International Business Reply Mail Service

Money Orders

Post Office Box Service

Negotiated Service Agreements

HSBC North America Holdings Inc.

Negotiated Service Agreement

Bookspan Negotiated Service Agreement

Bank of America Corporation Negotiated

Service Agreement

The Bradford Group Negotiated Service

Agreement

Inbound International

Canada Post—United States Postal Service

Contractual Bilateral Agreement for

Inbound Market Dominant Services

Market Dominant Product Descriptions

First-Class Mail

[Reserved for Class Description]

Single-Piece Letters/Postcards

[Reserved for Product Description]

Bulk Letters/Postcards

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Parcels

[Reserved for Product Description]

Outbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Inbound Single-Piece First-Class Mail

International

[Reserved for Product Description]

Standard Mail (Regular and Nonprofit)

[Reserved for Class Description]

High Density and Saturation Letters

[Reserved for Product Description]

High Density and Saturation Flats/Parcels

[Reserved for Product Description]

Carrier Route

[Reserved for Product Description]

Letters

[Reserved for Product Description]

Flats

[Reserved for Product Description]

Not Flat-Machinables (NFM)/Parcels

[Reserved for Product Description]

Periodicals

[Reserved for Class Description]

Within County Periodicals

[Reserved for Product Description]

Outside County Periodicals

[Reserved for Product Description]

Package Services

[Reserved for Class Description]

Single-Piece Parcel Post

[Reserved for Product Description]

Inbound Surface Parcel Post (at UPU rates)

[Reserved for Product Description]

Bound Printed Matter Flats

[Reserved for Product Description]

Bound Printed Matter Parcels

[Reserved for Product Description]

Media Mail/Library Mail

[Reserved for Product Description]

Special Services

[Reserved for Class Description]

Ancillary Services

[Reserved for Product Description]

Address Correction Service

[Reserved for Product Description]

Applications and Mailing Permits

[Reserved for Product Description]

Business Reply Mail

[Reserved for Product Description]

Bulk Parcel Return Service

[Reserved for Product Description]

Certified Mail

[Reserved for Product Description]

Certificate of Mailing

[Reserved for Product Description]

Collect on Delivery

[Reserved for Product Description]

Delivery Confirmation

[Reserved for Product Description]

Insurance

[Reserved for Product Description]

Merchandise Return Service

[Reserved for Product Description]

Parcel Airlift (PAL)

[Reserved for Product Description]

Registered Mail

[Reserved for Product Description]

Return Receipt [Reserved for Product Description]	International Surface Airlift (ISAL)	[Reserved for Product Description]
Return Receipt for Merchandise [Reserved for Product Description]	International Direct Sacks—M—Bags	International Direct Sacks—M—Bags [Reserved for Product Description]
Restricted Delivery [Reserved for Product Description]	Global Customized Shipping Services	Global Customized Shipping Services [Reserved for Product Description]
Shipper-Paid Forwarding [Reserved for Product Description]	Inbound Surface Parcel Post (at non-UPU rates)	International Money Transfer Service [Reserved for Product Description]
Signature Confirmation [Reserved for Product Description]	Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)	Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
Special Handling [Reserved for Product Description]	International Money Transfer Service	International Ancillary Services [Reserved for Product Description]
Stamped Envelopes [Reserved for Product Description]	International Ancillary Services	International Certificate of Mailing [Reserved for Product Description]
Stamped Cards [Reserved for Product Description]	Special Services	International Registered Mail [Reserved for Product Description]
Premium Stamped Stationery [Reserved for Product Description]	Premium Forwarding Service	International Return Receipt [Reserved for Product Description]
Premium Stamped Cards [Reserved for Product Description]	Negotiated Service Agreements	International Restricted Delivery [Reserved for Product Description]
International Ancillary Services [Reserved for Product Description]	Domestic	International Insurance [Reserved for Product Description]
International Certificate of Mailing [Reserved for Product Description]	Express Mail Contract 1 (MC2008–5)	Negotiated Service Agreements [Reserved for Group Description]
International Registered Mail [Reserved for Product Description]	Express Mail Contract 2 (MC2009–3 and CP2009–4)	Domestic [Reserved for Product Description]
International Return Receipt [Reserved for Product Description]	Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)	Outbound International [Reserved for Group Description]
International Restricted Delivery [Reserved for Product Description]	Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)	Part C—Glossary of Terms and Conditions [Reserved]
Address List Services [Reserved for Product Description]	Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)	Part D—Country Price Lists for International Mail [Reserved]
Caller Service [Reserved for Product Description]	Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)	[FR Doc. E9–2421 Filed 2–4–09; 8:45 am]
Change-of-Address Credit Card Authentication [Reserved for Product Description]	Priority Mail Contract 1 (MC2008–8 and CP2008–26)	BILLING CODE 7710–FW–P
Confirm [Reserved for Product Description]	Priority Mail Contract 2 (MC2009–2 and CP2009–3)	
International Reply Coupon Service [Reserved for Product Description]	Priority Mail Contract 3 (MC2009–4 and CP2009–5)	
International Business Reply Mail Service [Reserved for Product Description]	Priority Mail Contract 4 (MC2009–5 and CP2009–6)	
Money Orders [Reserved for Product Description]	Outbound International	
Post Office Box Service [Reserved for Product Description]	Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)	
Negotiated Service Agreements [Reserved for Class Description]	Global Expedited Package Services (GEPS) Contracts	
HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]	GEPS 1 (CP2008–5, CP2008–11, CP2008–12, and CP2008–13, CP2008–18, CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24)	
Bookspan Negotiated Service Agreement [Reserved for Product Description]	Global Plus Contracts	
Bank of America Corporation Negotiated Service Agreement	Global Plus 1 (CP2008–9 and CP2008–10)	
The Bradford Group Negotiated Service Agreement	Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)	
Part B—Competitive Products	Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)	
Competitive Product List	Competitive Product Descriptions	
Express Mail	Express Mail	
Express Mail	[Reserved for Group Description]	
Outbound International Expedited Services	Express Mail	
Inbound International Expedited Services	[Reserved for Product Description]	
Inbound International Expedited Services 1 (CP2008–7)	Outbound International Expedited Services [Reserved for Product Description]	
Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)	Inbound International Expedited Services [Reserved for Product Description]	
Priority Mail	Priority	
Priority Mail	[Reserved for Product Description]	
Outbound Priority Mail International	Priority Mail	
Inbound Air Parcel Post	[Reserved for Product Description]	
Parcel Select	Outbound Priority Mail International [Reserved for Product Description]	
Parcel Return Service	Inbound Air Parcel Post [Reserved for Product Description]	
International	Parcel Select [Reserved for Group Description]	
International Priority Airlift (IPA)	Parcel Return Service [Reserved for Group Description]	
	International	
	[Reserved for Group Description]	
	International Priority Airlift (IPA) [Reserved for Product Description]	
	International Surface Airlift (ISAL)	

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–177; FCC 08–228]

An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Commission announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection requirements associated with Sections 73.61, 73.68, 73.151 and 73.155 of the rules, and that these rules will take effect as of the date of this notice. On October 30, 2008, the Commission published the summary document of the *Second Report and Order*, In the Matter of An Inquiry Into the Commission's Policies and Rules Regarding AM Radio Service Directional Antenna Performance Verification, MM Docket No. 93–177, FCC 08–228, at 73 FR 64558. The Ordering Clause of the *Second Report and Order* stated that the Commission would publish a notice in