

§ 571.13 Copies of audit reports.

(a) Each tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements and audits required by § 571.12, together with management letter(s), and other documented auditor communications and/or reports as a result of the audit setting forth the results of each fiscal year. The submission must be sent to the Commission within 120 days after the end of each fiscal year of the gaming operation.

(b) If a gaming operation changes its fiscal year, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, reports, and audits required by § 571.12, together with management letter(s), setting forth the results of the stub period from the end of the previous fiscal year to the beginning of the new fiscal year. The submission must be sent to the Commission within 120 days after the end of the stub period, or a tribe may incorporate the financial results of the stub period in the financial statements for the new business year.

(c) When gaming ceases to operate and the tribal gaming regulatory authority has terminated the facility license required by § 559.6, the tribe shall prepare and submit to the Commission two paper copies or one electronic copy of the financial statements, reports, and audits required by § 571.12, together with management letter(s), setting forth the results covering the period since the period covered by the previous financial statements. The submission must be sent to the Commission within 120 days after the cessation of gaming activity or upon completion of the tribe's fiscal year.

■ 35. Revise § 571.14 to read as follows:

§ 571.14 Relationship of financial statements to fee assessment reports.

A tribe shall reconcile its Commission fee assessment reports, submitted under 25 CFR part 514, with its audited or reviewed financial statements for each location and make available such reconciliation upon request by the Commission's authorized representative.

PART 573—ENFORCEMENT

■ 36. The authority citation for part 573 continues to read as follows:

Authority: 25 U.S.C. 2703 (4), 2705(a)(1), 2706, 2713, 2715, 2719.

■ 37. Add new paragraph (a)(13) to § 573.6 to read as follows:

§ 573.6 Order of temporary closure.

(a) * * *

(13) A gaming facility operates on Indian lands not eligible for gaming under the Indian Gaming Regulatory Act.

* * * * *

Philip N. Hogen,

Chairman.

Norman H. DesRosiers,

Vice Chairman.

[FR Doc. E9-17121 Filed 7-24-09; 8:45 am]

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POSTAL REGULATORY COMMISSION**39 CFR Part 3020**

[Docket Nos. MC2009-27 and CP2009-37; Order No. 231]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 11 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations. Replication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective July 27, 2009 and is applicable beginning July 1, 2009.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6824 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 30179 (June 24, 2009).

- I. Background
- II. Comments
- III. Commission Analysis
- IV. Ordering Paragraphs

I. Background

The Postal Service seeks to add a new product identified as Priority Mail Contract 11 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

On June 11, 2009, the Postal Service filed a notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, announcing that it has entered into an additional contract (Priority Mail Contract 11), which it attempts to classify within the previously proposed Priority Mail Contract Group product.¹ In support, the Postal Service filed the

proposed contract and referenced Governors' Decision 09-6 filed in Docket No. MC2009-25. *Id.* at 1. The Notice has been assigned Docket No. CP2009-37.

In response to Order No. 222,² and in accordance with 39 U.S.C. 3642 and 39 CFR 3020 subpart B, the Postal Service filed a formal request to add Priority Mail Contract 11 to the Competitive Product List as a separate product.³ The Postal Service asserts that the Priority Mail Contract 11 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. MC2009-27.

In support of its Notice and Request, the Postal Service filed the following materials: (1) 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 the day that the Commission issues all regulatory approvals;⁴ (2) requested changes in the Mail Classification Schedule product list;⁵ (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁶ and (4) certification of compliance with 39 U.S.C. 3633(a).⁷

In the Statement of Supporting Justification, Mary Prince Anderson, Acting 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 B, at 1. W. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). Notice, Attachment B.

The Postal Service filed much of the supporting materials, including the unredacted contract, under seal. In its Notice, 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. Notice at 2-3.

² PRC Order No. 222, Notice and Order Concerning Filing of Priority Mail Contract 11 Negotiated Service Agreement, June 17, 2009 (Order No. 222).

³ Request of the United States Postal Service to Add Priority Mail Contract 11 to Competitive Product List, June 23, 2009 (Request).

⁴ Attachment A to the Notice.

⁵ Attachment A to the Request.

⁶ Attachment B to the Request.

⁷ Attachment B to the Notice.

¹ Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 11), June 11, 2009 (Notice).

In Order No. 222, the Commission gave notice of the two dockets, requested supplemental information, appointed a public representative, and provided the public with an opportunity to comment.⁸ On June 22, 2009, Chairman's Information Request No. 1 was filed.⁹ On June 23, 2009, the Postal Service filed the supplemental information requested.¹⁰ The Postal Service filed its response to the Chairman's Information Request on June 26, 2009.¹¹

II. Comments

Comments were filed by the Public Representative.¹² No comments 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 Priority Mail Contract 11 agreement comports with the requirements of title 39 and is appropriately classified as competitive. *Id.* at 3.

The Public Representative believes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2–3. He indicates that the contractual provisions are mutually beneficial to the parties and the general public. *Id.* at 4.

III. Commission Analysis

The Commission has reviewed the Notice, the Request, the contract, the financial analysis provided under seal that accompanies it, the Postal Service's responses to Chairman's Information Request No. 1, the Postal Service's response to the Commission's request for supplemental information, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities in this instance entail assigning Priority Mail Contract 11 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.

Product list assignment. In determining whether to assign Priority Mail Contract 11 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. 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 B, 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 Priority Mail Contract 11 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 11 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 Priority Mail Contract 11

results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. Order No. 222 and Chairman's Information Request No. 1 sought additional support and justification for particular cost saving elements. The Postal Service's responses did not persuade the Commission that certain cost savings elements were appropriate here.

Accordingly, the Commission's analysis of the proposed contract is based on alternative cost estimates of certain mail functions. The Commission employed this analysis to determine whether changed cost inputs would materially affect the contract's financial analysis.¹³ The Commission concludes that the changed inputs do not have a material effect on the underlying financial analysis of the contract.

Based on the data submitted and the Commission's alternative analysis, the Commission finds that Priority Mail Contract 11 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 proposed Priority Mail Contract 11 indicates that it comports with the provisions applicable to rates for competitive products.

The electronic files submitted in support of the Notice did not include all supporting data. Future requests must provide all electronic files showing calculations in support of the financial models associated with the request. A failure to provide such information may delay resolution of requests in the future.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves Priority Mail Contract 11 as a new product. The revision to the Competitive Product List is shown

¹³ The Commission's analysis is set forth in Library Reference PRC-CP2009-37-NP-LR-1, which, because it contains confidential information, is being filed under seal.

⁸ Order No. 222 at 1–4.

⁹ Chairman's Information Request No. 1 and Notice of Filing of Question Under Seal, June 22, 2009. A portion of the Chairman's Information Request was filed under seal.

¹⁰ Response of the United States Postal Service to Commission's Request for Supplemental Information in Order No. 222, June 23, 2009.

¹¹ Response to Chairman's Information Request No. 1, Question 2 and Notice of Filing Responses to Questions 1 and 3 Under Seal, June 26, 2009.

¹² Public Representative Comments in Response to United States Postal Service Notice of Establishment of Rates and Class Not of General Applicability (Priority Mail Contract 11), June 26, 2009 (Public Representative Comments).

below the signature of this order and is effective upon issuance of this order.

IV. Ordering Paragraphs

It is ordered:

1. Priority Mail Contract 11 (MC2009–27 and CP2009–37) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if the termination date occurs prior to that date, 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: July 1, 2009.

By the Commission.

Judith M. Grady,

Acting Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Service 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 to read as follows:

Appendix A to 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]

Return Receipt for Merchandise

[Reserved for Product Description]

Restricted Delivery

[Reserved for Product Description]

Shipper-Paid Forwarding

[Reserved for Product Description]

Signature Confirmation

[Reserved for Product Description]

Special Handling

[Reserved for Product Description]

Stamped Envelopes

[Reserved for Product Description]

Stamped Cards

[Reserved for Product Description]

Premium Stamped Stationery

[Reserved for Product Description]

Premium Stamped Cards

[Reserved for Product Description]

International Ancillary Services

[Reserved for Product Description]

International Certificate of Mailing

[Reserved for Product Description]

International Registered Mail

[Reserved for Product Description]

International Return Receipt

[Reserved for Product Description]

International Restricted Delivery

[Reserved for Product Description]

Address List Services

[Reserved for Product Description]

Caller Service

[Reserved for Product Description]

Change-of-Address Credit Card

Authentication

[Reserved for Product Description]

Confirm

[Reserved for Product Description]

International Reply Coupon Service

[Reserved for Product Description]

International Business Reply Mail Service

[Reserved for Product Description]

Money Orders

[Reserved for Product Description]

Post Office Box Service

[Reserved for Product Description]

Negotiated Service Agreements

[Reserved for Class Description]

HSBC North America Holdings Inc.

Negotiated Service Agreement

[Reserved for Product Description]
 Bookspan Negotiated Service Agreement
 [Reserved for Product Description]
 Bank of America Corporation Negotiated Service Agreement
 The Bradford Group Negotiated Service Agreement
 Part B—Competitive Products
 Competitive Product List
 Express Mail
 Express Mail
 Outbound International Expedited Services
 Inbound International Expedited Services
 Inbound International Expedited Services 1 (CP2008–7)
 Inbound International Expedited Services 2 (MC2009–10 and CP2009–12)
 Priority Mail
 Priority Mail
 Outbound Priority Mail International
 Inbound Air Parcel Post
 Royal Mail Group Inbound Air Parcel Post Agreement
 Parcel Select
 Parcel Return Service
 International
 International Priority Airlift (IPA)
 International Surface Airlift (ISAL)
 International Direct Sacks—M-Bags
 Global Customized Shipping Services
 Inbound Surface Parcel Post (at non-UPU rates)
 Canada Post—United States Postal Service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009–8 and CP2009–9)
 International Money Transfer Service
 International Ancillary Services
 Special Services
 Premium Forwarding Service
 Negotiated Service Agreements
 Domestic
 Express Mail Contract 1 (MC2008–5)
 Express Mail Contract 2 (MC2009–3 and CP2009–4)
 Express Mail Contract 3 (MC2009–15 and CP2009–21)
 Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7)
 Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14)
 Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17)
 Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24)
 Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25)
 Parcel Return Service Contract 1 (MC2009–1 and CP2009–2)
 Priority Mail Contract 1 (MC2008–8 and CP2008–26)
 Priority Mail Contract 2 (MC2009–2 and CP2009–3)
 Priority Mail Contract 3 (MC2009–4 and CP2009–5)
 Priority Mail Contract 4 (MC2009–5 and CP2009–6)
 Priority Mail Contract 5 (MC2009–21 and CP2009–26)
 Priority Mail Contract 6 (MC2009–25 and CP2009–30)
 Priority Mail Contract 7 (MC2009–25 and CP2009–31)
 Priority Mail Contract 8 (MC2009–25 and CP2009–32)
 Priority Mail Contract 9 (MC2009–25 and CP2009–33)

Priority Mail Contract 10 (MC2009–25 and CP2009–34)
 Priority Mail Contract 11 (MC2009–27 and CP2009–37)
 Outbound International
 Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11)
 Global Expedited Package Services (GEPS) Contracts
 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)
 Global Plus Contracts
 Global Plus 1 (CP2008–9 and CP2008–10)
 Global Plus 2 (MC2008–7, CP2008–16 and CP2008–17)
 Inbound International
 Inbound Direct Entry Contracts With Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15)
 International Business Reply Service
 Competitive Contract 1 (MC2009–14 and CP2009–20)
 Competitive Product Descriptions
 Express Mail
 [Reserved for Group Description]
 Express Mail
 [Reserved for Product Description]
 Outbound International Expedited Services
 [Reserved for Product Description]
 Inbound International Expedited Services
 [Reserved for Product Description]
 Priority
 [Reserved for Product Description]
 Priority Mail
 [Reserved for Product Description]
 Outbound Priority Mail International
 [Reserved for Product Description]
 Inbound Air Parcel Post
 [Reserved for Product Description]
 Parcel Select
 [Reserved for Group Description]
 Parcel Return Service
 [Reserved for Group Description]
 International
 [Reserved for Group Description]
 International Priority Airlift (IPA)
 [Reserved for Product Description]
 International Surface Airlift (ISAL)
 [Reserved for Product Description]
 International Direct Sacks—M-Bags
 [Reserved for Product Description]
 International Customized Shipping Services
 [Reserved for Product Description]
 International Money Transfer Service
 [Reserved for Product Description]
 Inbound Surface Parcel Post (at non-UPU rates)
 [Reserved for Product Description]
 International Ancillary Services
 [Reserved for Product Description]
 International Certificate of Mailing
 [Reserved for Product Description]
 International Registered Mail
 [Reserved for Product Description]
 International Return Receipt
 [Reserved for Product Description]
 International Restricted Delivery
 [Reserved for Product Description]
 International Insurance
 [Reserved for Product Description]
 Negotiated Service Agreements
 [Reserved for Group Description]
 Domestic
 [Reserved for Product Description]

Outbound International
 [Reserved for Group Description]
 Part C—Glossary of Terms and Conditions
 [Reserved]
 Part D—Country Price Lists for International Mail
 [Reserved]
 [FR Doc. E9–17842 Filed 7–24–09; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA-HQ-SFUND-2009-0501; FRL-8934-2]

National Oil and Hazardous Substance; Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct Final Notice of Deletion of the Southern California Edison, Visalia Pole Yard Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region IX, is publishing a Direct Final Notice of Deletion for the Southern California Edison (SCE), Visalia Pole Yard Superfund Site (Site) located in northeastern Visalia, Tulare County, California, from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final deletion is being published by EPA with the concurrence of the State of California, through the Department of Toxic Substance Control (DTSC), because EPA has determined that all appropriate response actions under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: This direct final deletion is effective September 25, 2009 unless EPA receives adverse comments by August 26, 2009. If adverse comment(s) are received, EPA will publish a timely withdrawal of the Direct Final Deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA-HQ-SFUND-2009-0501 by one of the following methods: