

date payment of the amount was initially due, consistent with § 199.11 of this part.

(4) *Remedies.* In the case of the failure of a manufacturer of a covered drug to make or honor an agreement under this paragraph (q), the Director, TMA, in addition to other actions referred to in this paragraph (q), may take any other action authorized by law.

(5) *Beneficiary transition provisions.* In cases in which a pharmaceutical is removed from the uniform formulary or designated for preauthorization under paragraph (q)(2) of this section, the Director, TMA may for transitional time periods determined appropriate by the Director or for particular circumstances authorize the continued availability of the pharmaceutical in the retail pharmacy network or in MTF pharmacies for some or all beneficiaries as if the pharmaceutical were still on the uniform formulary.

Dated: March 10, 2009.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. E9-5702 Filed 3-16-09; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 110

[Docket No. USCG-2008-0155]

RIN 1625-AA01

Anchorage Regulations; Port of New York; Correction

AGENCY: Coast Guard, DHS.

ACTION: Final rule; correction.

SUMMARY: The Coast Guard is correcting the preamble to a final rule that appeared in the **Federal Register** of March 11, 2009 (74 FR 10484). The preamble incorrectly referred to Department of Homeland Security Management Directive 5100.1, instead of Department of Homeland Security Management Directive 0023.1.

DATES: Effective April 10, 2009.

FOR FURTHER INFORMATION CONTACT: LT Edward Munoz, Chief, Waterways Management Division, telephone 718-354-2353.

SUPPLEMENTARY INFORMATION: In FR Doc. E9-5095 appearing on page 10484 of the **Federal Register** of Wednesday, March 11, 2009, the following correction is made:

1. On page 10486, in the second column, correct the "Environment"

section to read: "We have analyzed this rule under Department of Homeland Security Directive 0023.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph 34(f), of the Instruction. This rule involves a regulation reducing the size of an anchorage ground.

Under figure 2-1, paragraph (34)(f), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule."

Dated: March 12, 2009.

Steve G. Venckus,

Chief, Office of Regulations and Administrative Law.

[FR Doc. E9-5757 Filed 3-16-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-17 and CP2009-24; Order No. 187]

Domestic Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Express Mail & Priority Mail Contract 4 to the competitive product list. This action is consistent with changes in a recent law governing postal operations. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective March 17, 2009 and is applicable beginning March 10, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 9316 (March 2, 2009).

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 4 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On February 20, 2009, 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 4 to the Competitive Product List.¹ The Postal Service asserts that the Express Mail & Priority Mail Contract 4 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. MC2009-17.

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. CP2009-24.

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 4 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

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, February 20, 2009 (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.

unredacted contract, 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. 184, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁷

On March 3 and 10, 2009, the Postal Service filed errata to correct certain cost and revenue data.⁸

II. Comments

Comments were filed by the Public Representative.⁹ 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 4 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. He also points out several contractual provisions that he believes are mutually beneficial to the parties and general public. *Id.*

III. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis filed under seal, 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 4 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 Express Mail & Priority Mail Contract 4 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 4 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Express Mail & Priority Mail Contract 4 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 4 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.

Based on the data submitted, the Commission finds that Express Mail & Priority Mail Contract 4 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 4 indicates that it comports with the provisions applicable to rates for competitive products.

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 Express Mail & Priority Mail Contract 4 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 4 (MC2009–17 and CP2009–24) 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**.

By the Commission.

Steven W. Williams,
Secretary.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

⁷ PRC Order No. 184, Notice and Order Concerning Express Mail & Priority Mail Contract 4 Negotiated Service Agreement, February 24, 2009 (Order No. 184).

⁸ Notice of the United States Postal Service of Filing Under Seal of Errata to Documentation, March 3, 2009; Notice of the United States Postal Service of Filing Under Seal of Second Errata to Documentation, March 10, 2009.

⁹ Public Representative Comments in Response to United States Postal Service Request to Add Express Mail & Priority Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, March 5, 2009 (Public Representative Comments).

■ 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 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

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)
 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)
 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]
 Global 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. E9–5672 Filed 3–16–09; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–18 and CP2009–25; Order No. 188]

Domestic Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding a new product identified as Express Mail & Priority Mail Contract 5 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 March 17, 2009 and is applicable beginning March 10, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 9317 (March 3, 2009).

The Postal Service seeks to add a new product identified as Express Mail & Priority Mail Contract 5 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

I. Background

On February 20, 2009, 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 5 to the Competitive Product List.¹ The Postal Service asserts that the Express Mail & Priority Mail Contract 5 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. MC2009–18.

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. CP2009–25.

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 5 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

¹ Request of the United States Postal Service to Add Express Mail & Priority Mail Contract 5 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, February 20, 2009 (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.