

POSTAL REGULATORY COMMISSION**39 CFR Part 3020****[Docket No. MC2008–4; Order No. 88]****Administrative Practice and Procedure; Postal Service****AGENCY:** Postal Regulatory Commission.**ACTION:** Final Rule.

SUMMARY: The Commission is transferring Premium Forwarding Service from the market dominant list to the competitive product list. It is updating the market dominant product list to reflect the status of several agreements. It is also republishing the product lists. These actions are consistent with changes in a recent law.

DATES: Effective August 6, 2008.**FOR FURTHER INFORMATION CONTACT:**

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SUPPLEMENTARY INFORMATION:**I. Background**

On May 30, 2008, the Postal Service filed a request to modify the Mail Classification Schedule transferring Premium Forwarding Service (PFS), which is currently classified as a market dominant product within the Special Services class, to the competitive product list.¹ The Request was made pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* and included two attachments.²

Rule 3020.30 allows the Postal Service to request the transfer of a product from the market dominant product list to the competitive product list. The Postal Service must provide detailed support and justification for such a request. 39 CFR 3020.31 and 3020.32. The Commission reviews the Request and the comments of interested parties under 3020.34.

PFS provides residential postal customers with a forwarding service for their mail when they are away from their primary residences. Most mail from a customer's permanent address is forwarded once a week via Priority Mail to the customer's temporary address.³

The customer is charged a \$10 enrollment fee and a weekly fee of \$11.95.⁴ PFS is used by postal customers with multiple residences, or those on extended travel for business, or personal reasons, and recreational vehicle owners.

The Postal Service supports its Request with a Statement of Supporting Justification from Maura Robinson, Pricing Systems and Analysis Manager, at the Postal Service. The Postal Service explains that no Governors' Decision is required in this case since no change in classification or price is proposed, but merely a transfer of a product from one product list to another. Request at 1. The Postal Service also asserts that PFS will "meet the statutory cost coverage requirements" applicable to competitive products under 39 U.S.C. 3633. Request, Attachment B at 1–2. The Postal Service further asserts that because private alternative options to PFS are available in the form of commercial mail forwarding services or informal agreements with friends that PFS properly belongs in the competitive product category. *Id.* at 3–4. The Postal Service contends with regard to PFS that it does not have the "ability to set prices substantially above costs, raise prices significantly, decrease quality, or decrease output, without losing a significant level of business." *Id.* at 3. The Postal Service position is that the "[t]ransfer of PFS to the competitive product list will ensure that its revenues are appropriately classified, since * * * PFS is provided within a competitive market." *Id.* at 5.

The Commission issued its Notice and Order Concerning Postal Service's Request to Transfer Premium Forwarding Service to the Competitive Products Category and established Docket No. MC2008–4 on June 3, 2008.

II. Comments

The Commission in Order No. 80 provided interested persons an opportunity to offer comments on whether the proposed transfer of PFS from the market dominant to competitive product list is consistent with the policies of 39 U.S.C. 3633 and 3642. Comments were received from

United Parcel Service (UPS), the National Association of Retail Shipping Centers, Inc. (NARSC), the Public Representative, and David B. Popkin (Popkin).⁵ The Postal Service and Popkin also filed reply comments.⁶

In its comments, UPS asks that the Commission evaluate the impact the proposed transfer of PFS from the market dominant to the competitive product list would have on competitive products' required contribution to institutional costs. UPS Comments at 2. However, it also states that "[i]t does not appear that PFS will substantially change the contribution of competitive products collectively to institutional costs." UPS does not oppose the proposed transfer of PFS to the competitive product list. *Id.*

NARSC also does not oppose the proposed transfer, but states emphatically that the weekly fee for PFS should not be reduced from the current price of \$11.95. NARSC contends that "[p]ricing below that level [would] substantially [affect] the PMB [Private Mail Box] industry as a predatory business practice." NARSC Comments at 1.

Popkin comments that there are no true alternatives to PFS. Popkin Comments at 2–3. He states that commercial alternatives to PFS are not substantially the same because they must be used on a permanent basis and are not available in all locations. *Id.* He also contends that informal arrangements with friends and family are not a realistic alternative to PFS. *Id.* at 3. Mr. Popkin also expresses his concern that the present PFS rules require "that all interaction to establish, modify, or terminate the service be done in person at the post office servicing the customer's permanent mailing address" and that no alternatives are available to the in-person option. *Id.* at 1.

The Public Representative recommends that the Commission should either reject the proposed transfer of PFS from the market dominant to the competitive product list or institute proceedings under rule 3020.34(b) to further scrutinize the

¹ Request of the United States Postal Service, May 30, 2008 (Request).

² Attachment A illustrates the proposed changes to the Mail Classification Schedule. Attachment B is a Statement of Supporting Justification by Maura Robinson, Manager, Pricing Systems and Analysis for the Postal Service.

³ Mail that will be rerouted separately includes mail requiring a scan, signature, or additional postage at delivery. Express Mail articles are rerouted immediately. Priority Mail articles are rerouted separately unless shipping them in the PFS package would not delay their delivery. First-

Class Mail packages that do not fit in the weekly PFS shipment will be rerouted separately. Standard Mail pieces will only be included in the PFS package if they can be accommodated in the PFS package after letters, flats or large envelopes, and magazines have been included. Otherwise, Standard Mail pieces will be shipped postage due. Parcel Post, Bound Printed Matter, Media Mail, and Library Mail pieces will not be included in the PFS package, but will be shipped postage due.

⁴ PFS is available for a minimum of two weeks and maximum of 52 weeks. Payment for the entire period of service is due with the application.

⁵ Comments of United Parcel Service in Response to Order Concerning Postal Service's Request to Transfer Premium Forwarding Service to the Competitive Products Category (UPS Comments); Comments of National Association of Retail Shipping Centers, Inc. (Order No. 80) (NARSC Comments); Public Representative Comments on Postal Service Request to Transfer Premium Forwarding Service to the Competitive Products Category (Public Representative Comments); and Initial Comments of David B. Popkin (Popkin Comments); all filed June 16, 2008.

⁶ Reply Comments of the United States Postal Service, June 20, 2008 (Postal Service Reply Comments); Reply Comments of David B. Popkin, June 23, 2008 (Popkin Reply Comments).

proposed transfer. Public Representative Comments at 2. He asserts that the Postal Service has failed to demonstrate that it does not have sufficient market power over prices, quality of service and output with regard to PFS. *Id.* The Public Representative cautions that the Postal Service will exercise virtually unlimited market power with PFS in a significantly large segment of the market if PFS is moved to the competitive products list. *Id.* at 1–2. He also states that PFS should not be classified as a competitive product because there are no real alternatives for residential mailers. *Id.* at 4–6.

The Postal Service filed a motion to be allowed to offer a reply and offered reply comments to the Public Representative's comments.⁷ The Commission grants the Postal Service's motion. The Postal Service argues in its reply that although the available commercial alternatives to PFS may not be exactly the same as PFS, for example, they may have some differing features; they are substantially similar enough to classify PFS appropriately as a competitive, and not a market dominant, product. Postal Service Reply Comments at 2–3. The Postal Service states that NARSC's comments make it clear that NARSC sees PFS as a competitor to its members' mail forwarding services offerings. *Id.* at 3. The Postal Service also references a recent Commission field hearing in Flagstaff, Arizona where Cameron Powell, Vice President of Earth Class Mail in Seattle, Washington, testified that Earth Class Mail provides a reasonable alternative to PFS for mailers that are within the target market. *Id.*

Popkin also filed a motion to be allowed to offer a reply and offered reply comments.⁸ The Commission grants Popkin's motion. In his reply comments Popkin contends that services provided by NARSC members and Earth Class Mail are not substantially similar enough to truly be competitive with PFS services. Popkin Reply Comments at 2–3. He states that a search of NARSC's website reveals that in the Northeast region of the United States no NARSC member stores exist in Maine, Vermont, Rhode Island, New Jersey, Delaware, and the District of Columbia, and that only limited locations are available in New Hampshire, Massachusetts, Connecticut, New York, Pennsylvania, and Maryland.

Id. at 2. Popkin also lists prices for various Earth Class Mail services related to mail forwarding apparently implying that Earth Class Mail services are more expensive than PFS. *Id.* at 3. He again concludes that PFS has no truly comparable competition.

III. Commission Analysis

39 U.S.C. 3642 addresses adding or removing products from the competitive and market dominant product lists and “transferring products between the lists.” The Postal Service, the Commission, and users of the mail can request such an addition, removal or transfer.

The statute lays out several criteria that must be considered by the Commission when deciding whether an addition, removal, or transfer of a product is appropriate. The threshold question the Commission must ask is 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 this is the case, 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 that use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).⁹ The Commission rules implementing section 3642 require the Postal Service to provide data and supporting justification when requesting the addition, removal or transfer of a product. 39 CFR 3020.30 *et seq.*

The question of whether the Postal Service has sufficient market power to effectively set prices for PFS without actual competition has been addressed by the Postal Service, the Public Representative, and Popkin.

The Public Representative argues that the Postal Service exercises “virtually unlimited market power with PFS in a significantly large segment, if not virtually all, of the relevant market * * *” and that it has failed to provide the necessary justification and supporting data to make a sufficient showing that PFS is not a market

dominant product. Public Representative Comments at 2–4. Popkin also contends that there are no truly competitive alternatives to PFS because of significant pricing, logistic and geographic availability differences. Popkin Comments at 2–4; Popkin Reply Comments at 3.

The Postal Service, on the other hand, asserts that its bargaining position is constrained by the existence of other shippers who can provide services similar to PFS, and thus, the market precludes it from taking unilateral action to increase prices or decrease service without the risk of losing volume to private companies in the mail forwarding business. Request, Attachment B at 2–4. The Postal Service claims that informal agreements with friends, private sector firms and commercial mail forwarding services offer substantially similar mail forwarding services under similar conditions. *Id.* The Postal Service has not provided specific data concerning those alternatives, but cites several alternative sources like Earth Class Mail, several mail forwarding services geared towards snowbirds, and commercial mail receiving agencies. *Id.*; Postal Service Reply Comments at 2. In addition, it appears that Mail Boxes Etc. (MBE) provides a mail forwarding service for its mailbox customers.¹⁰ With the exception of mail forwarding services provided by friends, all other services require that customers change their address with the Postal Service on a temporary or permanent basis.¹¹

Finally, the Postal Service states that PFS is but one alternative in the mail forwarding market and that “[t]here is likely to be a minimal impact, if any, on small business concerns.” Request, Attachment B at 4. In addition, because the competitive product rules set a cost floor, the Postal Service asserts that it will not be able to under price PFS in order to eliminate competitors. *Id.* at 5.

This is the first time the Commission has been called upon to decide whether it is appropriate to transfer a service from the market dominant product list to the competitive product list. The record supports the finding that there is a sufficient pool of alternative services

¹⁰ <http://www.mbe.com/ps/index.html>.

¹¹ The Commission is not convinced by the Postal Service's argument that informal mail forwarding by friends and neighbors is substantially similar to the services provided by PFS or commercial alternative mail forwarding options. PFS customers enter into a formal business-like relationship with the Postal Service with the benefit of clearly established parameters for the forwarding of their mail. Friends are not “firms offering similar products.” 39 U.S.C. 3642(b)(1). Nonetheless, such an arrangement may be a satisfactory alternative for some mail recipients.

⁷ Motion of the United States Postal Service for Acceptance of Reply Comments, June 20, 2008 (Postal Service Reply Comments).

⁸ Motion of David B. Popkin for Acceptance of Reply Comments, June 23, 2008; David B. Popkin Reply Comments, June 23, 2008 (Popkin Reply Comments).

⁹ In addition, products that are covered by the postal monopoly may not be transferred from the market dominant to the competitive product list. 39 U.S.C. 3642(b)(2).

that are sufficiently similar to PFS to limit the Postal Service's ability to effectively set the price (in the technical economic sense) of PFS.¹²

The Commission notes that a transfer of a product between product lists is not necessarily permanent. If circumstances should warrant in the future, for example, if the Postal Service appeared to be price gouging users of this service, the Commission under section 3642 and its own rules can initiate a transfer of PFS from the competitive product list back to the market dominant product list. Moreover, users of the mail also can request such a transfer. See 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*

As part of its responsibility, the Commission will review competitive products for their compliance with 39 U.S.C. 3633. The Commission has previously reviewed the cost coverage of PFS and determined that PFS covers its costs¹³ (39 U.S.C. 3633(a)(2)); the transfer 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' collective ability to provide their appropriate share of institutional costs (39 U.S.C. 3633(a)(3)).¹⁴ Thus, a preliminary review of the transfer of PFS to the competitive product list indicates that it comports with the provisions applicable to rates for competitive products.¹⁵

Therefore, having considered the statutory requirements, the argument put forth by the Postal Service, and the public comments, the Commission finds that PFS may be appropriately categorized as a competitive product, and therefore, may be transferred to the competitive product list.

IV. Other Changes to the Mail Classification Schedule

Other revisions are also being made to the Mail Classification Schedule. In the Negotiated Service Agreements section, the Discover Financial Services Negotiated Service Agreement¹⁶ and the Bank One Negotiated Service

Agreement¹⁷ have expired, and will be deleted, and the Bank of America Corporation¹⁸ and The Bradford Group agreements¹⁹ previously approved will be added.

The revisions to the market dominant and competitive product lists are shown below the signature of this Order, and shall become effective upon publication in the **Federal Register**.

It is Ordered:

1. The Postal Service request to modify the Mail Classification Schedule by transferring Premium Forwarding Service to the competitive product list filed May 30, 2008, is granted.

2. The Motion of the United States Postal Service for Acceptance of Reply Comments filed June 20, 2008, is granted.

3. The Motion of David B. Popkin for Acceptance of Reply Comments filed June 23, 2008, is granted.

4. The Discover Financial Services Negotiated Service Agreement is deleted from the Mail Classification Schedule.

5. The Bank One Negotiated Service Agreement is deleted from the Mail Classification Schedule.

6. The Bank of America Corporation Negotiated Service Agreement is added to the Mail Classification Schedule.

7. The Bradford Group Negotiated Service Agreement is added to the Mail Classification Schedule.

8. The Secretary shall arrange for publication of this Order in the **Federal Register**.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

By the Commission.

Issued July 16, 2008.

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:

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

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

■ 2. Revise Parts A and B of Appendix A to Subpart A of Part 3020—Mail Classification Schedule to read as follows:

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

¹⁷ Docket No. MC2004–3. The agreement expired on April 1, 2008.

¹⁸ Docket No. MC2007–1. The agreement became effective on April 1, 2008.

¹⁹ Docket No. MC2007–4. The agreement became effective on June 1, 2008.

¹² The absence of quantitative support for this conclusion is inescapable as PFS is a new, low volume special service providing a product that is ancillary to the core functions of the Postal Service's business.

¹³ See Request at 1–2. "The record also makes clear that PFS covers costs and, with overall cost coverage exceeding 140 percent, makes a reasonable contribution to overhead costs." PRC Op. MC2007–3 at 3, January 7, 2008.

¹⁴ *Id.*

¹⁵ PFS will be reviewed again as part of the Annual Compliance Determination in early 2009 and any changes, if necessary, will be recommended at that time.

¹⁶ Docket No. MC2004–4. The agreement expired on January 1, 2008.

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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)s/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
1001 Market Dominant Product Descriptions

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Part B—Competitive Products

2000 Competitive Product List

Express Mail

Express Mail
Outbound International Expedited Services
Inbound International Expedited Services
Inbound International Expedited Services 1 (CP2008–7)

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)	Premium Forwarding Service	Global Plus 1 (CP2008–9 and
International Direct Sacks—M—Bags	Negotiated Service Agreements	CP2008–10)
Global Customized Shipping Services	Domestic	
Inbound Surface Parcel Post (at non-	Outbound International	* * * * *
UPU rates)	Global Expedited Package Services	[FR Doc. E8–17984 Filed 8–5–08; 8:45 am]
International Money Transfer Service	(GEPS) Contracts	
International Ancillary Services	GEPS 1 (CP2008–5)	BILLING CODE 7710–FW–P
Special Services	Global Plus Contracts	