

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 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 under the Instruction that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

ADDRESSES.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–033 to read as follows:

§ 165.T08–033 Safety Zone; Allegheny River, Clinton, PA.

(a) *Location.* The following area is a Safety Zone: The waters extending the entire width of the Allegheny River from mile marker 36.1 to mile marker 36.5.

(b) *Enforcement Period.* This rule will be enforced from 1 p.m. on October 30, 2008 until 11:59 p.m. on December 31, 2008. The Captain of the Port Pittsburgh or a designated representative will

inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the planned schedule.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port Pittsburgh.

(2) Persons or vessels requiring entry into or passage through a safety zone must request permission from the Captain of the Port Pittsburgh or a designated representative. They may be contacted through Coast Guard Sector Ohio Valley at 1–800–253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

Dated: October 30, 2008.

S.T. Higman,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port Pittsburgh.

[FR Doc. E8–27980 Filed 11–24–08; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–5 and CP2009–6; Order No. 135]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.
ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 4 to the Competitive Product List. This action is consistent with changes in a recent law governing postal operations and a related Postal Service request. Republication of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective November 25, 2008.

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*, 73 FR 66077 (November 6, 2008).

The Postal Service seeks to add a new product identified as Priority Mail

Contract 4 to the Competitive Product List. For reasons discussed below, the Commission approves the Request.

I. Background

On October 27, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Priority Mail Contract 4 to the Competitive Product List. The Postal Service asserts that the 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. MC2009–5.¹

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. CP2009–6.

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 the Priority Mail Contract 4;² (2) a redacted version of the contract, which, among other things, provides that the contract will expire 2 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 institutional costs, and 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 Governors’ Decision and the specific Priority Mail Contract 4, 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 under seal. *Id.* at 2.

In Order No. 124, 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’s comments focus principally on confidentiality and pricing under the contract. Public Representative Comments at 2–3. The Public Representative states that the Postal Service has justified the extent of confidentiality appropriate in this matter. *Id.*

He concludes, *inter alia*, that the contract should generate sufficient revenue to cover the product’s attributable costs and contribute to the recovery of total institutional costs assigned to competitive products. *Id.* at 3–4.

III. Commission Analysis

The Commission has reviewed 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 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 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 or 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, at 2–3. 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 shipper supports the addition of the contract to the product list to effectuate the negotiated contractual terms. *Id.* at 3. 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.*

No commenter opposes the proposed classification of Priority Mail Contract 4 as competitive. Having considered the statutory requirement and the support offered by the Postal Service, the Commission finds that 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’s filing seeks to establish a new domestic Priority Mail product. The contract is predicated on unit costs for major mail functions, *e.g.*, window

¹ Request of the United States Postal Service to Add Priority Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 27, 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. *See also* Second Errata to Request of the United States Postal Service to Add Priority Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 30, 2008. The Postal Service subsequently revised its analysis. *See* Third Errata to Request of the United States Postal Service to Add Priority Mail Contract 4 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, November 18, 2008.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

⁷ PRC Order No. 124, Notice and Order Concerning Priority Mail Contract 4 Negotiated Service Agreement, October 31, 2008 (Order No. 124).

⁸ Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 4 to Competitive Product List, November 6, 2008 (Public Representative Comments).

service, mail processing, and transportation, based on the shipper's mail characteristics.

The Postal Service contends that adding the Priority Mail Contract 4 product will result in processing Priority Mail pieces that are less costly for the Postal Service than the average Priority Mail piece. *See id.* Attachment A. It believes that its financial analysis shows that these cost savings can be accomplished 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. *Id.*, Attachment E, at 1.

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

The Postal Service shall promptly notify the Commission when the contract terminates, but no later than the actual termination date. The Commission will then remove the contract from the Mail Classification Schedule at the earliest possible opportunity.

In conclusion, the Commission approves 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 the order.

IV. Ordering Paragraphs

It is Ordered:

1. Priority Mail Contract 4 (MC2009–5 and CP2009–6) 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 termination date of the contract 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.

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 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
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)
 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)
 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)
 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 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 Direct Entry Contracts with
 Foreign Postal Administrations
 (MC2008–6, CP2008–14 and CP2008–15)
 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. E8–27910 Filed 11–24–08; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2005–0161; FRL–8723–3]

RIN 2060–AO80

Regulation of Fuels and Fuel Additives: Modifications to Renewable Fuel Standard Program Requirements

Correction

In rule document E8–23131 beginning
 on page 57248 in the issue of Thursday,
 October 2, 2008, make the following
 correction:

§ 80.1127 [Corrected]

On page 57255, in the second column,
 in § 80.1127(b)(2), the formula should
 appear as follows:

$$D_i = RVO_i - [(\Sigma RINNUM)_i + (\Sigma RINNUM)_{i-1}]$$

[FR Doc. Z8–23131 Filed 11–24–08; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 08–2453; MB Docket No. 08–127; RM–
 11459]

Television Broadcasting Services; Madison, WI

AGENCY: Federal Communications
 Commission.

ACTION: Final rule.

SUMMARY: The Commission grants a
 petition for rulemaking filed by WMSN
 Licensee, LLC, licensee of station
 WMSN–DT, to substitute DTV channel
 49 for post-transition DTV channel 11 at
 Madison, Wisconsin.

DATES: The channel substitution is
 effective December 26, 2008.