regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 931

Intergovernmental relations, Surface mining, Underground mining.

Dated: October 9, 2008.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 931 is amended as set forth below:

PART 931—New Mexico

■ 1. The authority citation for part 931 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 931.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 931.15 Approval of New Mexico regulatory program amendments

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
November 28, 2007 ...	November 18, 2008 ..	19 NMAC Parts 1 through 35 (recodification), 19.8.1.7.G(1); 19.8.11.1100.D(1); 19.8.11.1102.A; 19.8.11.1103.A; 19.8.11.1109.B and C; 19.8.13.1301.E(1) and E(2)(b); 19.8.13.1307.B(2); 19.8.14.1412.A(2)(f); 19.8.14.1412.F; 19.8.20.2065.A and B(1); 19.8.20.2068; 19.8.30.3000; 19.8.31.3108.B; 19.8.31.3110.B; 19.8.5.504.D; 19.8.7.701.F; 19.8.8.812.D; 19.8.11.1100.B(1), (2), (3), and (4), D(5), E(3), and F; 19.8.11.1103.B, E, and F; 19.8.13.1301.E(2)(a); 19.8.31.3106.B(3)(a).

[FR Doc. E8–27360 Filed 11–17–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2008–1104]

RIN 1625–AA09

Drawbridge Operation Regulations; Elizabeth River—Eastern Branch, at Norfolk, VA, Maintenance

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Norfolk Southern Railroad (NS# V2.8) Bridge, at mile 2.7, across the Elizabeth River—Eastern Branch at Norfolk, VA. Under this temporary deviation, the drawbridge may remain in the closed position on specific dates and times to facilitate mechanical repairs.

DATES: This deviation is effective from 7 a.m. on December 8, 2008, to 11 p.m. on December 19, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1104 and are available online at *www.regulations.gov.* They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays, and the Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

SUPPLEMENTARY INFORMATION: The Norfolk Southern Corporation, who owns and operates this single-leaf bascule drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.1007(a) to facilitate mechanical repairs.

The NS# V2.8 Bridge, a swing-type drawbridge, has a vertical clearance in the closed position to vessels of six feet, above mean high water

To facilitate repairs to the center wedge machinery of the swing span, the drawbridge will be maintained in the closed-to-navigation position from 7 a.m. on December 8, 2008, until and including 11 p.m. on December 19, 2008.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the opening restrictions of the draw span to minimize transiting delays caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 5, 2008.

Waverly W. Gregory, Jr.,

Chief, Bridge Administration Branch Fifth Coast Guard District.

[FR Doc. E8–27266 Filed 11–17–08; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009–4 and CP2009–5; Order No. 131]

Administrative Practice and Procedure, Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Priority Mail Contract 3 (MC2009–4 and CP2009–5) to the Competitive Product List. It is also noticing a related contract. These actions are 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 18, 2008.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 73 FR 66075 (November 6, 2008).

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

List. For the 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 3 to the Competitive Product List.[1] The Postal Service asserts that the Priority Mail Contract 3 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). This Request has been assigned Docket No. MC2009–4.

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. CP2009–5.

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 Priority Mail Contract 3 and certification of the Governors' vote;[2] (2) a redacted version of the contract which, among other things, provides that the contract will expire 1 year from the effective date, which is proposed to be 1 day after the Commission issues all regulatory approvals;[3] (3) requested changes in the MCS 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. Ashley Lyons, Manager, Corporate Financial Planning, Finance Department, certifies, based on the financial analysis provided by the Postal Service, 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 3, under seal. In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections, should remain under seal. *Id.* at 2.

In Order No. 123, 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 a sufficient rationale for maintaining the confidentiality of the documents under seal has been provided by the Postal Service. The Public Representative reviewed the cost savings measures for the purposes of this contract and determines that the contract is advantageous to the Postal Service and beneficial to the general public. *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 3 to either the Market Dominant Product List or to the Competitive Product List. 39 U.S.C. 3642. As part of this responsibility, the Commission also reviews the proposal for compliance with the Postal Accountability and Enhancement Act (PAEA) requirements. This includes, for proposed competitive products, a review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

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

> the Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms 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 contract partner 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 3 as competitive. Having considered the statutory requirement and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 3 is appropriately classified as a competitive product and should be added to the Competitive Product List.

Cost considerations. The Postal Service's filing seeks to establish a new domestic Priority Mail product. The

[1] Request of the United States Postal Service to Add Priority Mail Contract 3 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* Errata to Request of the United States Postal Service to Add Priority Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, October 30, 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. 123, Notice and Order Concerning Priority Mail Contract 3 Negotiated Service Agreement, October 31, 2008 (Order No. 123).

[8] Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 3 to Competitive Product List, November 6, 2008 (Public Representative Comments).

contract is predicated on unit costs for major mail functions, *e.g.*, window service, mail processing, and transportation, based on the shipper's mail characteristics.

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

The Postal Service shall promptly notify the Commission 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 3 as a new product. The revision to the Competitive Product List is shown below the signature of this Order and is effective upon issuance of this Order.

It Is Ordered:

1. Priority Mail Contract 3 (MC2009–4 and CP2009–5) 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 (NFMs)/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 (NFMs)/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)
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. E8–27323 Filed 11–17–08; 8:45 am]
BILLING CODE 7710–FW–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 080219211–81123–01]

RIN 0648–AU98

Sea Turtle Conservation; Fishing Gear Inspection Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS establishes an inspection program for modified pound net leaders in the Virginia waters of the mainstem Chesapeake Bay. Current regulations require modified pound net leaders, as defined in the regulations, in a portion of the Virginia Chesapeake Bay while also allowing them to be used in a different portion of the Chesapeake Bay. This action would help ensure that leaders used in those areas do in fact meet the definition of a modified pound net leader. This action, taken under the Endangered Species Act of 1973 (ESA), as amended, is intended to facilitate compliance with the existing regulation, which is designed to help protect threatened and endangered sea turtles.

DATES: Effective December 18, 2008.

FOR FURTHER INFORMATION CONTACT: Carrie Upite (ph. 978–281–9300 x6525, fax 978–281–9394), or Barbara Schroeder (ph. 301–713–2322, fax 301–427–2522).

SUPPLEMENTARY INFORMATION:

Background

Based upon documented sea turtle interactions with pound net leaders, NMFS issued a final rule on May 5, 2004 (69 FR 24997), that prohibited the use of offshore pound net leaders from