

Approved: November 11, 2009.

**Steven T. Miller,**

*Deputy Commissioner of Services and Enforcement.*

Approved: November 11, 2009.

**Michael F. Mundaca,**

*Acting Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E9-28330 Filed 11-24-09; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### 30 CFR Parts 7 and 75

**RIN 1219-AB58**

#### Refuge Alternatives for Underground Coal Mines

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Final rule; correction.

**SUMMARY:** This rule informs the mining community that MSHA rescinds the Agency's intent stated in the preamble to the final rule on Refuge Alternatives for Underground Coal Mines, concerning preemption of private tort litigation with respect to the Agency's approval of specifications for a refuge alternative.

**DATES:** *Effective Date:* November 25, 2009.

**FOR FURTHER INFORMATION CONTACT:**

Patricia W. Silvey, Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209-3939. Ms. Silvey can be reached at 202-693-9440 (voice), 202-693-9441 (facsimile), or [silvey.patricia@dol.gov](mailto:silvey.patricia@dol.gov) (Internet e-mail).

**SUPPLEMENTARY INFORMATION:** On December 31, 2008, MSHA published a final rule on Refuge Alternatives for Underground Coal Mines. (73 FR 80656). The preamble includes a discussion on preemption, and states that "it is MSHA's intent that its approval of specifications for a refuge alternative preempts private tort litigation questioning the propriety of those specifications." (73 FR 80658).

On May 20, 2009, the President issued a Memorandum for the Heads of Executive Departments and Agencies on Preemption. The purpose of the Memorandum is to state the general policy of the Administration that preemption of State law by executive departments and agencies should be undertaken only with full consideration of the legitimate prerogatives of the

States and with a sufficient legal basis for preemption. The Memorandum directs executive departments and agencies to "review regulations issued within the past 10 years that contain statements in regulatory preambles or codified provisions intended by the department or agency to preempt State law, in order to decide whether such statements or provisions are justified under applicable legal principles governing preemption." In addition, the memorandum states that "where the head of a department or agency determines that a regulatory statement of preemption or codified regulatory provision cannot be so justified, the head of that department or agency should initiate appropriate action, which may include amendment of the relevant regulation."

Section 506(b) of the Federal Mine Safety and Health Act of 1977 (Mine Act), concerning "Effect on State Laws," specifically addresses preemption of state law as follows:

The provisions of any State law or regulation in effect upon the operative date of this Act, or which may become effective thereafter, which provide for more stringent health and safety standards applicable to coal or other mines than do the provisions of this Act or any order issued or any mandatory health or safety standard shall not thereby be construed or held to be in conflict with this Act. 30 U.S.C. 955.

In addition, the House Report to the Mine Act, states that "Federal law would supersede any State law in conflict with it," but that "State laws providing more stringent standards than exist under the Federal law, however, would not be held in conflict with the [Mine] act." H. Rep. No. 95-312, 95th Cong., 1st Sess., at 55 (1977).

In accordance with the Presidential Memorandum on Preemption, MSHA has reviewed the Agency's standards and regulations issued within the past 10 years. MSHA's review found that a statement in the preamble to the Refuge Alternatives final rule is the only rule issued in the past 10 years to contain a preemption statement.

MSHA has determined that the Mine Act does not show any basis, or Congressional intent, for inferring any attempt to preempt state tort law regarding MSHA's approval specifications for refuge alternatives. As stated earlier, the Mine Act provides, for example, that State laws or regulations that provide more stringent requirements than those imposed under the Mine Act, are not construed or held to be in conflict with the Mine Act. MSHA's determination to rescind the preemption statement in the preamble to the Refuge Alternatives rule is

consistent with the intent of the Mine Act and is consistent with the Presidential Memorandum. The preemption statement in the preamble was, at best, interpretive guidance purporting to interpret statutory language in the Mine Act, which was included in the preamble of the final rule without seeking prior public comment. It did not create any new law or substantive rule, but simply stated what the agency thought the statute meant. Further, this interpretation was published only recently, making it unlikely that any member of MSHA's regulated community has relied to their detriment on the interpretation. Under these circumstances, notice and comment also are not required in withdrawing this interpretation. See *Warshauer v. Solis*, 577 F.3d 1330 (11th Cir. 2009); *MetWest, Inc. v. Sec'y of Labor*, 560 F.3d 506, 509-511 (DC Cir. 2009).

Accordingly, MSHA rescinds the last paragraph of the section-by-section discussion of "Section 7.501 Purpose and Scope," starting on line 51 of the center column and ending on line 24 of the third column, 73 FR 80658, for the reason that this statement is not justified under the Mine Act principles governing preemption, and there was no intent by Congress, under the Mine Act, to supersede state action in this regard.

Dated: November 19, 2009.

**Joseph A. Main,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. E9-28214 Filed 11-24-09; 8:45 am]

**BILLING CODE 4510-43-P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3020

[Docket Nos. MC2010-2 and CP2010-2; Order No. 324]

#### New Postal Product

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Final rule.

**SUMMARY:** The Commission is adding the Priority Mail Contract 20 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 November 25, 2009 and is applicable beginning October 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel,

202-789-6820 or *stephen.sharfman@prc.gov*.

**SUPPLEMENTARY INFORMATION:** *Regulatory History*, 74 FR 54598 (October 22, 2009).

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

## I. Introduction

The Postal Service seeks to add a new product identified as Priority Mail Contract 20 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

## II. Background

On October 14, 2009, 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 20 to the Competitive Product List.<sup>1</sup> The Postal Service asserts that the Priority Mail Contract 20 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. MC2010–2.

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. CP2010–2.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors’ Decision, originally filed in Docket No. MC2009–25, authorizing the Priority Mail Contract Group;<sup>2</sup> (2) a redacted version of the contract;<sup>3</sup> (3) a requested change in the Mail Classification Schedule product list;<sup>4</sup> (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;<sup>5</sup> (5) a certification of compliance with 39 U.S.C. 3633(a);<sup>6</sup> and (6) an application for non-public treatment of the materials filed under seal.<sup>7</sup> The redacted version of the contract provides that the contract is terminable on 30 days’ notice by either party, but could continue for 3 years from the effective date subject to annual price adjustments. Request, Attachment B.

In the Statement of Supporting Justification, Mary Prince Anderson,

Acting Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to coverage of institutional costs, and will increase contribution toward the requisite 5.5 percent of the Postal Service’s total institutional costs. Request, Attachment D, at 1. W. Ashley Lyons, Manager, Regulatory Reporting and Cost Analysis, Finance Department, certifies that the contract complies with 39 U.S.C. 3633(a). *Id.*, Attachment E.

The Postal Service filed much of the supporting materials, including the supporting data and the unredacted contract, under seal. The Postal Service maintains that the contract and related financial information, including the customer’s name and the accompanying analyses that provide prices, certain terms and conditions, and financial projections, should remain confidential. *Id.*, Attachment F, at 2–3.<sup>8</sup>

In Order No. 315, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.<sup>9</sup>

## III. Comments

Comments were filed by the Public Representative.<sup>10</sup> No comments were submitted by other interested parties. The Public Representative states that the Postal Service’s filing meets the pertinent provisions of title 39 and the relevant Commission rules. *Id.* at 1, 3. He further states that the agreement employs pricing terms favorable to the customer, the Postal Service, and thereby, the public. *Id.* at 3–4. The Public Representative also believes that the Postal Service has provided appropriate justification for maintaining confidentiality in this case. *Id.* at 3.

## IV. Commission Analysis

The Commission has reviewed the Request, 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 20 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 20 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 consists 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.*, 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.*, para. (h).

<sup>1</sup> Request of the United States Postal Service to Add Priority Mail Contract 20 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, October 14, 2009 (Request).

<sup>2</sup> Attachment A to the Request, reflecting Governors’ Decision No. 09–6, April 27, 2009.

<sup>3</sup> Attachment B to the Request.

<sup>4</sup> Attachment C to the Request.

<sup>5</sup> Attachment D to the Request.

<sup>6</sup> Attachment E to the Request.

<sup>7</sup> Attachment F to the Request.

<sup>8</sup> In its application for non-public treatment, the Postal Service requests an indefinite extension of non-public treatment of customer-identifying information. *Id.* at 7. For the reasons discussed in PRC Order No. 323, that request is denied. See Docket No. MC2010–1 and CP2010–1, Order Concerning Priority Mail Contract 19 Negotiated Service Agreement, October 26, 2009.

<sup>9</sup> PRC Order No. 315, Notice and Order Concerning Priority Mail Contract 20 Negotiated Service Agreement, October 16, 2009 (Order No. 315).

<sup>10</sup> Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 20 Negotiated Service Agreement to the Competitive Products List, October 26, 2009 (Public Representative Comments).

No commenter opposes the proposed classification of Priority Mail Contract 20 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 20 is appropriately classified as a competitive product and should be added to the Competitive Product List.

*Cost considerations.* The Postal Service presents a financial analysis showing that Priority Mail Contract 20 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 Priority Mail Contract 20 should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)). Thus, an initial review of proposed Priority Mail Contract 20 indicates that it comports with the provisions applicable to rates for competitive products.

*Other considerations.* The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date. Following the scheduled termination date of the agreement, the Commission will remove the product from the Competitive Product List.

In conclusion, the Commission approves Priority Mail Contract 20 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.

## V. Ordering Paragraphs

*It is ordered:*

1. Priority Mail Contract 20 (MC2010–2 and CP2010–2) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission if termination occurs prior to the scheduled termination date.

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.

**Judith M. Grady,**  
*Acting Secretary.*

■ For the reasons discussed in the preamble, the Postal Regulatory

Commission amends chapter III of title 39 of the Code of Federal Regulations 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 Schedule 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]	Global Customized Shipping Services	Priority Mail Contract 18 (MC2009-42 and CP2009-63)
Shipper-Paid Forwarding	Inbound Surface Parcel Post (at non-UPU rates)	Priority Mail Contract 19 (MC2010-1 and CP2010-1)
[Reserved for Product Description]	Canada Post—United States Postal service	Priority Mail Contract 20 (MC2010-2 and CP2010-2)
Signature Confirmation	Contractual Bilateral Agreement for Inbound Competitive Services (MC2009-8 and CP2009-9)	Outbound International
[Reserved for Product Description]	International Money Transfer Service	Direct Entry Parcels Contracts
Special Handling	International Ancillary Services	Direct Entry Parcels 1 (MC2009-26 and CP2009-36)
[Reserved for Product Description]	Special Services	Global Direct Contracts (MC2009-9, CP2009-10, and CP2009-11)
Stamped Envelopes	Premium Forwarding Service	Global Expedited Package Services (GEPS) Contracts
[Reserved for Product Description]	Negotiated Service Agreements	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)
Stamped Cards	Domestic	Global Expedited Package Services 2 (CP2009-50)
[Reserved for Product Description]	Express Mail Contract 1 (MC2008-5)	Global Plus Contracts
Premium Stamped Stationery	Express Mail Contract 2 (MC2009-3 and CP2009-4)	Global Plus 1 (CP2008-8, CP2008-46 and CP2009-47)
[Reserved for Product Description]	Express Mail Contract 3 (MC2009-15 and CP2009-21)	Global Plus 2 (MC2008-7, CP2008-48 and CP2008-49)
Premium Stamped Cards	Express Mail Contract 4 (MC2009-34 and CP2009-45)	Inbound International
[Reserved for Product Description]	Express Mail & Priority Mail Contract 1 (MC2009-6 and CP2009-7)	Inbound Direct Entry Contracts with Foreign Postal Administrations
International Ancillary Services	Express Mail & Priority Mail Contract 2 (MC2009-12 and CP2009-14)	Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008-6, CP2008-14 and MC2008-15)
[Reserved for Product Description]	Express Mail & Priority Mail Contract 3 (MC2009-13 and CP2009-17)	Inbound Direct Entry Contracts with Foreign Postal Administrations 1 (MC2008-6 and CP2009-62)
International Certificate of Mailing	Express Mail & Priority Mail Contract 4 (MC2009-17 and CP2009-24)	International Business Reply Service
[Reserved for Product Description]	Express Mail & Priority Mail Contract 5 (MC2009-18 and CP2009-25)	Competitive Contract 1 (MC2009-14 and CP2009-20)
International Registered Mail	Express Mail & Priority Mail Contract 6 (MC2009-31 and CP2009-42)	Competitive Product Descriptions
[Reserved for Product Description]	Express Mail & Priority Mail Contract 7 (MC2009-32 and CP2009-43)	Express Mail [Reserved for Group Description]
International Return Receipt	Express Mail & Priority Mail Contract 8 (MC2009-33 and CP2009-44)	Express Mail [Reserved for Product Description]
[Reserved for Product Description]	Parcel Select & Parcel Return Service Contract 1 (MC2009-11 and CP2009-13)	Outbound International Expedited Services [Reserved for Product Description]
International Restricted Delivery	Parcel Select & Parcel Return Service Contract 2 (MC2009-40 and CP2009-61)	Inbound International Expedited Services [Reserved for Product Description]
[Reserved for Product Description]	Parcel Return Service Contract 1 (MC2009-1 and CP2009-2)	Priority [Reserved for Product Description]
Address List Services	Priority Mail Contract 1 (MC2008-8 and CP2008-26)	Priority Mail [Reserved for Product Description]
[Reserved for Product Description]	Priority Mail Contract 2 (MC2009-2 and CP2009-3)	Outbound Priority Mail International [Reserved for Product Description]
Caller Service	Priority Mail Contract 3 (MC2009-4 and CP2009-5)	Inbound Air Parcel Post [Reserved for Product Description]
[Reserved for Product Description]	Priority Mail Contract 4 (MC2009-5 and CP2009-6)	Parcel Select [Reserved for Group Description]
Change-of-Address Credit Card Authentication	Priority Mail Contract 5 (MC2009-21 and CP2009-26)	Parcel Return Service [Reserved for Group Description]
[Reserved for Product Description]	Priority Mail Contract 6 (MC2009-25 and CP2009-30)	International [Reserved for Group Description]
Confirm	Priority Mail Contract 7 (MC2009-25 and CP2009-31)	International Priority Airlift (IPA) [Reserved for Product Description]
[Reserved for Product Description]	Priority Mail Contract 8 (MC2009-25 and CP2009-32)	International Surface Airlift (ISAL) [Reserved for Product Description]
International Reply Coupon Service	Priority Mail Contract 9 (MC2009-25 and CP2009-33)	International Direct Sacks—M-Bags [Reserved for Product Description]
[Reserved for Product Description]	Priority Mail Contract 10 (MC2009-25 and CP2009-34)	Global Customized Shipping Services [Reserved for Product Description]
International Business Reply Mail Service	Priority Mail Contract 11 (MC2009-27 and CP2009-37)	International Money Transfer Service [Reserved for Product Description]
[Reserved for Product Description]	Priority Mail Contract 12 (MC2009-28 and CP2009-38)	Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
Money Orders	Priority Mail Contract 13 (MC2009-29 and CP2009-39)	International Ancillary Services [Reserved for Product Description]
[Reserved for Product Description]	Priority Mail Contract 14 (MC2009-30 and CP2009-40)	International Certificate of Mailing [Reserved for Product Description]
Post Office Box Service	Priority Mail Contract 15 (MC2009-35 and CP2009-54)	
[Reserved for Product Description]	Priority Mail Contract 16 (MC2009-36 and CP2009-55)	
Negotiated Service Agreements	Priority Mail Contract 17 (MC2009-37 and CP2009-56)	
[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		
2000 Competitive Product List		
Express Mail		
Express Mail		
Outbound International Expedited Services		
Inbound International Expedited Services		
Inbound International Expedited Services 1 (CP2008-7)		
Inbound International Expedited Services 2 (MC2009-10 and CP2009-12)		
Priority Mail		
Priority Mail		
Outbound Priority Mail International		
Inbound Air Parcel Post		
Royal Mail Group Inbound Air Parcel Post Agreement		
Parcel Select		
Parcel Return Service		
International		
International Priority Airlift (IPA)		
International Surface Airlift (ISAL)		
International Direct Sacks—M-Bags		

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]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 97

[EPA–R04–OAR–2009–0765; FRL–8984–6]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Implementation Plans; Tennessee; Clean Air Interstate Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve revisions to the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on July 13, 2009. This revision incorporates provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) concerning sulfur dioxides (SO<sub>2</sub>), nitrogen oxides (NO<sub>x</sub>) annual, and NO<sub>x</sub> ozone season emissions for the State of Tennessee, promulgated on April 28, 2006, and subsequently revised December 13, 2006.

**DATES:** *Effective Date:* This final rule is effective November 25, 2009.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2009–0765. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is

restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Twunjala Bradley, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Bradley can be reached by telephone at (404) 562–9352 and by electronic mail at [bradley.twunjala@epa.gov](mailto:bradley.twunjala@epa.gov).

#### SUPPLEMENTARY INFORMATION:

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#### I. EPA's Action

EPA is taking final action to approve a revision to Tennessee's SIP, submitted by Tennessee on July 13, 2009, as clarified herein, that is modifying the application of certain provisions of the CAIR FIP concerning NO<sub>x</sub> ozone season emissions. (As discussed in the notice of proposed rulemaking for this submission, this less comprehensive CAIR SIP is termed an abbreviated SIP.) Tennessee is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain energy generating units (EGUs) to participate in the EPA administered CAIR cap-and-trade programs addressing SO<sub>2</sub>, NO<sub>x</sub> annual, and NO<sub>x</sub> ozone season emissions. This SIP revision provides a methodology for allocating NO<sub>x</sub> allowances for the NO<sub>x</sub> ozone season trading program for NO<sub>x</sub> SIP Call trading sources that are not EGUs as defined by CAIR, but are subject to the CAIR NO<sub>x</sub> ozone season trading program. The CAIR FIPs provide that this methodology will be used to allocate NO<sub>x</sub> Ozone Season allowances to sources in Tennessee. Consistent with

the flexibility provided in the FIPs, these provisions will also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIP for Tennessee. EPA is also approving technical corrections to the CAIR NO<sub>x</sub> Ozone Season Trading Program opt-in provisions, as noted in the August 20, 2007, approval. Since EPA will no longer administer the NO<sub>x</sub> Budget Trading Program, Tennessee has chosen to terminate its Budget Trading program rules (TAPCR Rule 1200–03–27–.06). EPA is, therefore, approving provisions which terminate the State's NO<sub>x</sub> Budget Trading Program because those requirements are now addressed by the CAIR NO<sub>x</sub> Ozone Season FIP, as modified by the State's abbreviated SIP. Finally, EPA is not making any changes to the CAIR FIP, but is amending the appropriate appendices to note EPA's approval of Tennessee's SIP revision.

#### II. Background

On February 11, 2009, Tennessee adopted a revision to its CAIR NO<sub>x</sub> Ozone Season Trading Program, and on July 13, 2009, submitted a request to EPA for approval of these revisions into the SIP. That request was revised on September 21, 2009, and supplemented by a letter to EPA dated September 24, 2009, clarifying portions of the submittal.

The CAIR FIPs established budgets for Tennessee as 50,973 (2009–2014) and 42,478 (2015–thereafter) tons for NO<sub>x</sub> annual emissions, 22,842 (2009–2014) and 19,035 (2015–thereafter) tons for NO<sub>x</sub> ozone season emissions and 137,216 (2010–2014) and 96,051 (2015–thereafter) tons for SO<sub>2</sub> emissions. In Tennessee's SIP revision, submitted on July 13, 2009, Tennessee has chosen to include all NO<sub>x</sub> SIP Call trading sources that are not EGUs under CAIR in the CAIR NO<sub>x</sub> ozone season trading program. As a result of this SIP revision, the CAIR NO<sub>x</sub> ozone season budget will be increased annually by 5,666 tons to account for such NO<sub>x</sub> SIP Call trading sources. The total Tennessee CAIR NO<sub>x</sub> ozone season budgets are therefore, 28,508 (2009–2014) and 24,701 (2015–thereafter) tons. EPA is approving Tennessee State trading budgets under TAPCR 1200–3–27–.11(2)(c).

EPA published a notice of proposed rulemaking to approve Tennessee's revisions to the CAIR SIP on October 14, 2009, (74 FR 52717). EPA did not receive any comments during the public comment period for the proposed rulemaking.

EPA notes that, in *North Carolina v. EPA*, 531 F.3d 836 (DC Cir. Jul.11, 2008) at 916–21, the Court determined, among other things, that the state SO<sub>2</sub> and NO<sub>x</sub>