

Taking of Private Property

This rule will not effect 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 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction, because the rule establishes a safety zone.

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, 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 temporary § 165.T09-0646 to read as follows:

§ 165.T09-0646 Safety Zone; Upper Mississippi River, Mile 427.2 to 427.6.

(a) *Location.* The following area is a safety zone: All waters of the Upper Mississippi River, from surface to bottom and from Mile 427.2 to 427.6 extending the entire width of the waterway.

(b) *Effective date.* This rule is effective from 8 p.m. until 10:30 p.m. CDT on September 5, 2009.

(c) *Periods of Enforcement.* This rule is effective from 8 p.m. until 10:30 p.m.

CDT on September 5, 2009. The Captain of the Port Upper Mississippi River will inform the public through broadcast notice to mariners of all safety zone changes and enforcement periods.

(d) *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 Upper Mississippi River or a designated representative.

(2) Persons or vessels requiring entry into or passage through the zone must request permission from the Captain of the Port Upper Mississippi River or a designated representative. The Captain of the Port Upper Mississippi River representative may be contacted at (314) 269-2332.

(3) All persons and vessels must comply with the instructions of the Captain of the Port Upper Mississippi River or a designated representative. Designated Captain of the Port representatives include United States Coast Guard commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: July 17, 2009.

S.L. Hudson,

Captain, U.S. Coast Guard, Captain of the Port Upper Mississippi River.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-35 and CP2009-54; Order No. 277]

Priority Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding the Priority Mail Contract 15 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 August 31, 2009 and is applicable beginning August 14, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History*, 74 FR 39121 (August 5, 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 15 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On July 24, 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 15 to the Competitive Product List.¹ The Postal Service asserts that the Priority Mail Contract 15 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. MC2009–35.

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. CP2009–54.

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the contract which, among other things, provides that the contract will expire 3 years from the effective date, which is proposed to be the day that the Commission issues all regulatory approvals;² (2) requested changes in the Mail Classification Schedule product list;³ (3) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁴ and (4) certification of compliance with 39 U.S.C. 3633(a).⁵ The Postal Service also references Governors’ Decision 09–6, filed in Docket No. MC2009–25, as authorization of the new product. Notice at 1.

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 C, 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). *See id.*, Attachment D.

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

In Order No. 259, the Commission gave notice of the two dockets, appointed a public representative, and provided the public with an opportunity to comment.⁶

III. Comments

Comments were filed by the Public Representative.⁷ No comments were submitted by other interested parties. The Public Representative states that the Postal Service’s filing comports with title 39 and the relevant Commission Rules of Practice and Procedure. *Id.* at 1, 3–4. He further states that the agreement appears to be beneficial to the general public. *Id.* at 1, 4.

With respect to confidentiality, the Public Representative believes that “[t]o comply with Order No. 247 in Docket[s] MC2009–30 and CP2009–40, the Postal Service should include with its filing a redacted copy of the Governors’ Decision and certification.” *Id.* at 3 (footnote omitted).

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 15 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 15 as a product to the Market Dominant Product List or the Competitive Product List, the Commission must consider whether

[T]he Postal Service exercises sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant level of business to other firms offering similar products.

39 U.S.C. 3642(b)(1). If so, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

The Commission is further required to consider the availability and nature of enterprises in the private sector engaged in the delivery of the product, the views of those who use the product, and the likely impact on small business concerns. 39 U.S.C. 3642(b)(3).

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services, thus precluding it from taking unilateral action to increase prices without the risk of losing volume to private companies. Request, Attachment C, para. (d). The Postal Service also contends that it may not decrease quality or output without risking the loss of business to competitors that offer similar expedited delivery services. *Id.* It further states that the contract partner supports the addition of the contract to the Competitive Product List to effectuate the negotiated contractual terms. *Id.* at para. (g). Finally, the Postal Service states that the market for expedited delivery services is highly competitive and requires a substantial infrastructure to support a national network. It indicates that large carriers serve this market. Accordingly, the Postal Service states that it is unaware of any small business concerns that could offer comparable service for this customer. *Id.* at para. (h).

No commenter opposes the proposed classification of Priority Mail Contract 15 as competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Priority Mail Contract 15 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 15 results in cost savings while ensuring that the contract covers its attributable costs, does not result in subsidization of competitive products by market

¹ Request of the United States Postal Service to Add Priority Mail Contract 15 to Competitive Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, July 24, 2009 (Request).

² Attachment A to the Request.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ PRC Order No. 259, Notice and Order Concerning Priority Mail Contract 15 Negotiated Service Agreement, July 29, 2009 (Order No. 259).

⁷ Public Representative Comments in Response to United States Postal Service Request to Add Priority Mail Contract 15 to Competitive Product List, August 6, 2009 (Public Representative Comments).

dominant products, and increases contribution from competitive products.

Based on the data submitted, the Commission finds that Priority Mail Contract 15 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 15 indicates that it comports with the provisions applicable to rates for competitive products.

Other considerations. The Postal Service shall promptly notify the Commission of the scheduled termination date of the agreement. If the agreement terminates earlier than anticipated, the Postal Service shall inform the Commission prior to the new termination date. The Commission will then remove the product from the Competitive Product List.

Furthermore, the Public Representative's assessment of Order No. 247 is well-taken. Public Representative Comments at 3–4. Subsequently, the Commission issued Order No. 266, which clarified the policy regarding self-contained docket filings. *See* Docket No. CP2009–47, Order Concerning Filing a Functionally Equivalent Global Plus 1 Contract Negotiated Service Agreement, July 31, 2009, at 6–7 (Order No. 266). In recent filings, the Postal Service has adhered to this policy.

In conclusion, the Commission approves Priority Mail Contract 15 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 15 (MC2009–35 and CP2009–54) is added to the Competitive Product List as a new product under Negotiated Service Agreements, Domestic.

2. The Postal Service shall notify the Commission of the scheduled termination date and update the Commission if termination occurs prior to that date, as discussed in this order.

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

Issued: August 14, 2009.

By the Commission.

Judith M. Grady,
Acting 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 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]

Shipper-Paid Forwarding

<p>[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</p> <p>Part B—Competitive Products</p> <p>2000 Competitive Product List</p> <p>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)</p> <p>Priority Mail Priority Mail Outbound Priority Mail International Inbound Air Parcel Post Royal Mail Group Inbound Air Parcel Post Agreement</p> <p>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)</p>	<p>Canada Post—United States Postal service Contractual Bilateral Agreement for Inbound Competitive Services (MC2009– 8 and CP2009–9) International Money Transfer Service International Ancillary Services Special Services Premium Forwarding Service Negotiated Service Agreements</p> <p>Domestic Express Mail Contract 1 (MC2008–5) Express Mail Contract 2 (MC2009–3 and CP2009–4) Express Mail Contract 3 (MC2009–15 and CP2009–21) Express Mail Contract 4 (MC2009–34 and CP2009–45) Express Mail & Priority Mail Contract 1 (MC2009–6 and CP2009–7) Express Mail & Priority Mail Contract 2 (MC2009–12 and CP2009–14) Express Mail & Priority Mail Contract 3 (MC2009–13 and CP2009–17) Express Mail & Priority Mail Contract 4 (MC2009–17 and CP2009–24) Express Mail & Priority Mail Contract 5 (MC2009–18 and CP2009–25) Express Mail & Priority Mail Contract 6 (MC2009–31 and CP2009–42) Express Mail & Priority Mail Contract 7 (MC2009–32 and CP2009–43) Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44) 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) Priority Mail Contract 5 (MC2009–21 and CP2009–26) Priority Mail Contract 6 (MC2009–25 and CP2009–30) Priority Mail Contract 7 (MC2009–25 and CP2009–31) Priority Mail Contract 8 (MC2009–25 and CP2009–32) Priority Mail Contract 9 (MC2009–25 and CP2009–33) Priority Mail Contract 10 (MC2009–25 and CP2009–34) Priority Mail Contract 11 (MC2009–27 and CP2009–37) Priority Mail Contract 12 (MC2009–28 and CP2009–38) Priority Mail Contract 13 (MC2009–29 and CP2009–39) Priority Mail Contract 14 (MC2009–30 and CP2009–40) Priority Mail Contract 15 (MC2009–35 and CP2009–54)</p> <p>Outbound International Direct Entry Parcels Contracts Direct Entry Parcels 1 (MC2009–26 and CP2009–36) Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11) Global Expedited Package Services (GEPS) Contracts GEPS 1 (CP2008–5, CP2008–11, CP2008– 12, and CP2008–13, CP2008–18,</p>	<p>CP2008–19, CP2008–20, CP2008–21, CP2008–22, CP2008–23, and CP2008–24) Global Plus Contracts Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47) Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49)</p> <p>Inbound International Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15) International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20)</p> <p>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]</p> <p>Part C—Glossary of Terms and Conditions [Reserved]</p> <p>Part D—Country Price Lists for International Mail [Reserved]</p> <p>[FR Doc. E9–20907 Filed 8–28–09; 8:45 am]</p> <p>BILLING CODE 7710-FW-P</p>
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