

DATES: *Effective date:* August 18, 2008.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW-CO (David B. Olson), 441 G Street, NW., Washington, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, DC, at (202) 761-4922, Mr. Scott Jones, Corps of Engineers, Wilmington District, Regulatory Branch, at (202) 761-7763, or Ms. Tracey Wheeler, Corps of Engineers, Wilmington District, Regulatory Branch, at (252) 975-1616.

SUPPLEMENTARY INFORMATION: In the April 25, 2007, issue of the **Federal Register** (72 FR 20460), the Corps published a proposed rule to designate an existing rifle range fan as a danger zone. The proposed danger zone is within an existing restricted area that was established in 1951 (16 FR 2578) and amended in 1997 (62 FR 17553). In response to the April 25, 2007, proposed rule, no comments were received.

Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps amends 33 CFR 334.430 by adding a danger zone along the Neuse River as described below. The regulations governing the existing restricted area have not been changed.

Procedural Requirements

a. Review Under Executive Order 12866

This rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act (Pub. L. 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps has determined that the establishment of this danger zone will have practically no economic impact on the public, result in no anticipated navigational hazard, and will not interfere with existing waterway traffic. This rule will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act

Due to the administrative nature of this action and because there is no intended change in the use of the area,

the Corps determined that this regulation will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment has been prepared. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This rule does not impose an enforceable duty on the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either section 202 or section 205 of the Unfunded Mandates Act. We have also found under section 203 of the Act that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

■ For the reasons set out in the preamble, the Corps amends 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

■ 1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

■ 2. Revise § 334.430 to read as follows:

§ 334.430 Neuse River and tributaries at Marine Corps Air Station Cherry Point, North Carolina; restricted area and danger zone.

(a) *The restricted area.* That portion of Neuse River within 500 feet of the shore along the reservation of the Marine Corps Air Station, Cherry Point, North Carolina, extending from the mouth of Hancock Creek to a point approximately 6,800 feet west of the mouth of Slocum Creek, and all waters of Hancock and Slocum Creeks and their tributaries within the boundaries of the reservation.

(b) *The danger zone.* The waters within an area beginning at latitude 34.923425° N, longitude -76.853222° W; thence northeasterly across Hancock Creek to latitude 34.925258° N, longitude -76.849864° W; continuing northeasterly to latitude 34.933382° N, longitude -76.835081° W; thence northwesterly to the Neuse River shoreline at latitude 34.936986° N, longitude -76.841197° W, continuing northwesterly to latitude 34.943275° N, longitude -76.852169° W; thence

southwesterly along the shorelines to latitude 34.935111° N, longitude -76.859078° W; thence southeasterly along Hancock Creek shoreline to the point of origin.

(c) *The regulations.* (1) Except in cases of extreme emergency, all persons or vessels, other than those operated by the United States Navy or United States Coast Guard, are prohibited from entering the restricted area without prior permission of the enforcing agency.

(2) Entry points into the danger zone will be prominently marked with signage indicating the boundary of the danger zone.

(3) Firing will take place both day and night at irregular periods throughout the year. Appropriate warnings will be issued through official government and civilian channels serving the region. Such warnings will specify the time and duration of operations and give such other pertinent information as may be required in the interest of safety. Upon completion of firing or if the scheduled firing is cancelled for any reason, the warning signals marking the danger zone will be removed.

(4) Except as otherwise provided in this section the danger zone will be open to general public access. Vessels, watercraft, and other vehicles may proceed through the danger zone.

(5) The regulation in this section shall be enforced by the Commanding Officer, Marine Corps Air Station Cherry Point, North Carolina, and/or persons or agencies as he/she may designate.

Dated: July 11, 2008.

James R. Hannon, Jr.,

Acting Chief, Operations, Directorate of Civil Works.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket No. CP2008-7; Order No. 84]

Administrative Practice and Procedure; Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Commission is adding the Postal Service's negotiated agreement with China Post Group to the competitive product list. This action is consistent with changes in a recent law governing postal operations. Reproduction of the lists of market dominant and competitive products is also consistent with new requirements in the law.

DATES: Effective July 18, 2008. Related Postal Service filings due July 23, 2008.

FOR FURTHER INFORMATION CONTACT:

Stephen L. Sharfman, General Counsel, 202-789-6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION: On May 20, 2008, the Postal Service filed notice, pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5, of the Governors' decision establishing prices for competitive products not of general applicability for Inbound Express Mail International (EMS).¹ The Postal Service's filing, docketed as Docket No. CP2008-6, includes supporting material, including the Governors' decision, filed under seal. Concurrently, the Postal Service filed notice, pursuant to 39 CFR 3015.5, of a specific negotiated service agreement covering Inbound EMS prices.² This filing, docketed as Docket No. CP2008-7, includes the contract and supporting materials filed under seal.

On June 3, 2008, the Commission issued Order No. 79, which determined that Docket No. CP2008-6 establishes, in essence, a shell classification, while Docket No. CP2008-7 is a specific agreement negotiated pursuant to the conditions of the shell classification. Given this interrelationship, the Commission consolidated the proceedings for purposes of review under Docket No. CP2008-7.³

In Order No. 79, the Commission also reiterated its position that each negotiated service agreement will initially be classified as a separate product, while acknowledging the possibility of grouping functionally equivalent agreements as a single product if they exhibit similar cost and market characteristics. *Id.* at 2-3. This, in effect, invoked the filing and review requirements of 39 CFR part 3020, subpart B, along with the requirements of rule 3015.5 for competitive products.

On June 10, 2008, the Postal Service filed material responsive to questions posed in Order No. 79, and material responsive to 39 CFR part 3020, subpart B.⁴ The material responsive to 39 CFR

part 3020, subpart B included a statement of supporting justification sponsored by Pranab Shah. *See* Postal Service Response, Attachment A.

The Commission previously proposed, at a minimum, identifying each international mail agreement with foreign posts involving competitive products (both in the Mail Classification Schedule and in other documents generated by the Commission) by the name(s) of the foreign post(s), the mail product(s) involved, and the agreement's expiration date. Order No. 79 at 3-4. In this instance, the Postal Service did not object to this proposal. Postal Service Response at 3.

The Commission also noted that it has made no determination as to whether the portions of the agreement in Docket No. CP2008-7 that relate to outbound mail are subject to its review. Order No. 79 at 3. The Postal Service reiterated its position that an "outbound EMS agreement with China Post Group would no more need to be classified as a product or otherwise subjected to Commission review than would an agreement to purchase trucking services from highway contractors or to purchase air transportation from air carriers." Postal Service Response at 3.

Order No. 79 also provided an opportunity for public comment on the Postal Service's proposals. Comments were received from the Public Representative (an employee of the Commission assigned to represent the interests of the general public) and United Parcel Service.⁵ Neither the Public Representative nor United Parcel Service expressed opposition to the China Post Group agreement.

The Public Representative concludes that the China Post Group agreement "complies with the legal requirements for cost coverage and contribution to the Postal Service's institutional costs." Public Representative Comments at 4. United Parcel Service supports the Commission's conclusion that this initial agreement be treated as a new product. UPS Comments at 2. It also suggests that because private carriers face more onerous customs and brokerage requirements than the Postal Service, the market for international package delivery and expedited services is less competitive than is often

and Procedure, June 10, 2008 (Postal Service Response).

⁵ Public Representative Comments in Response to United States Postal Service Notice of Negotiated Service Agreement (NSA) for Inbound Express Mail International (EMS) with China Post (Public Representative Comments); Comments of United Parcel Service in Response to Order Concerning Prices Under Express Mail International Bilateral/Multilateral Agreements (UPS Comments); both filed June 16, 2008.

assumed. *Id.* Both the Public Representative and United Parcel Service discuss issues encompassing the provision of materials under seal. Public Representative Comments at 2-3; UPS Comments at 1.

Commission analysis. The statutory responsibility of the Commission, in this instance, is to assign a new product to either the market dominant list or the competitive product list. 39 U.S.C. 3642. As part of this responsibility, the Commission also will preliminarily review the proposal for compliance with the requirements of the Postal Accountability and Enhancement Act (PAEA) of 2006. For proposed competitive products, this includes review of the provisions applicable to rates for competitive products. 39 U.S.C. 3633.

The Postal Service contends that adding the shell classification as a product will improve the Postal Service's competitive posture. It argues that this can be accomplished while allowing verification that each agreement covers attributable costs, does not result in subsidization of competitive products by market dominant products, and increases contribution from competitive products. Alternatively, adding the individual agreement as a product also will improve the competitive posture of the Postal Service, but to a lesser degree. Postal Service Response, Attachment A, at 2.

The Commission has reviewed the financial analysis provided under seal that accompanies the agreement and finds that the China Post Group agreement 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 the collective competitive products ability to provide their appropriate share of institutional costs (39 U.S.C. 3633(a)(3)).⁶ Thus, a preliminary review of the agreement indicates that it comports with the

⁶ The Commission notes that the Postal Service derived inflation adjustment factors from two point estimates for a 21-month period, September 2007 to May 2009, rather than June 2008 to May 2009, which coincides with the duration of the bilateral agreement. The Commission also notes that the estimate of the total unit cost of inbound Express Mail from China Post Group is based upon an estimate of the unit cost of domestic mail processing that represents an average of the domestic mail processing cost of inbound Express Mail from all countries rather than the average unit domestic mail processing cost for transition system countries. These observations did not have a significant impact on the overall analysis; however, the rationale for a 21-month period and the use of an average should be explained when filing future similar agreements.

¹ Notice of United States Postal Service of Governors' Decision on Inbound Prices Under Express Mail International (EMS) Bilateral/Multilateral Agreements, May 20, 2008 (Notice).

² Notice of United States Postal Service of Filing an Agreement for Inbound Express Mail International (EMS) Prices, May 20, 2008 (Pricing Notice).

³ PRC Order No. 79, Notice and Order Concerning Prices Under Express Mail International Bilateral/Multilateral Agreements, June 3, 2008 at 2 (Order No. 79).

⁴ United States Postal Service Response to Order No. 79 and Notice of Filing Information Responsive to Part 3020 of the Commission's Rules of Practice

provisions applicable to rates for competitive products. In determining whether to assign the China Post Group agreement 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 this is the case, the product will be categorized as market dominant. The competitive category of products shall consist of all other products.

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

The Postal Service asserts that its bargaining position is constrained by the existence of other shippers who can provide similar services. Thus, the market precludes the Postal Service from taking unilateral action to increase prices or decrease service without the risk of losing volume to private companies in the international shipping industry. Postal Service Response, Attachment A, at 2–3. The Postal Service contends that private consolidators and freight forwarders may offer international arrangements under similar conditions. *Id.* at 3. The Postal Service has no specific data on the views of those that use the products on the regulatory classification. *Id.* at 4. Finally, the Postal Service states that large shippers serve the market under consideration, and that there should be little impact upon small business other than adding an additional option for shipping articles to the United States. *Id.*

The Commission previously assigned Inbound International Expedited Services to the competitive product list.⁷ The Postal Service contends that the China Post Group agreement falls within the Inbound International Expedited Services heading. The Commission has not received public opposition to the proposed regulatory classification during the comment period. Having considered the statutory requirements, the argument put forth by the Postal Service, and the public comment, the Commission finds that the

China Post Group agreement is appropriately categorized as a competitive product and should be added to the competitive product list. The revisions to the competitive product list are shown below the signature of this order, and shall become effective upon publication in the **Federal Register**.

Mail Classification Schedule. The Postal Service previously proposed applicable draft Mail Classification Schedule language governing Inbound Express Mail International Services (EMS).⁸ Attachment A to the Governors' decision filed in Docket No. CP2008–6 repeats this language. These proposals suggest assigning the China Post Group agreement to the Express Mail, Inbound Express Mail International category. In Docket Nos. CP2008–4, CP2008–5, CP2008–8, CP2008–9, and CP2008–10, the Postal Service's draft Mail Classification Schedule language proposes to assign the associated agreements to the Negotiated Service Agreements, Outbound International category. The intent of the overall Negotiated Service Agreements category is to organize all negotiated agreements. Thus, the categorization in the instant docket does not appear to be consistent with the other proposals. The Commission invites the Postal Service to share its thoughts and concerns on development of a consistent approach to organizing competitive product negotiated agreements within the Mail Classification Schedule.

The Postal Service's proposed Mail Classification Schedule language indicates that other negotiated agreements may exist within Inbound Express Mail International: Bilateral Express Mail Service (EMS); EMS Cooperative Pay for Performance; Kahala Posts Group; European Parcel Group; and China Post Group. The Commission does not have specific information on the negotiated agreements for these products. The Postal Service shall provide the Commission with a list of ongoing agreement names, and expiration dates separated by product, along with a copy of each agreement.⁹ Providing this information will aid the Commission in understanding the Postal Service's product offerings, and enhance the transparency of the Postal Service to the mailing community.

⁸ See United States Postal Service Submission of Additional Mail Classification Schedule Information in Response to Order No. 43, November 20, 2007.

⁹ See 39 U.S.C. 407(d)(2). Agreements that fall outside of the defined product models also are to be provided.

Updating the Mail Classification Schedule. The China Post Group agreement contains provisions for early termination and automatic renewal of the agreement. The Postal Service shall notify the Commission of an early termination no later than the date of termination. The Commission then will remove the agreement from the Mail Classification Schedule at the earliest possible opportunity. The Postal Service also shall notify the Commission of an automatic renewal of the agreement 15 days prior its occurrence. Otherwise, the Commission will assume that the contract has lapsed and remove the agreement from the Mail Classification Schedule without notice.

Additional agreements. As of now, the China Post Group agreement represented by Inbound International Expedited Services 1 (CP2008–7) in the competitive product list may be considered the same entity. In the future, the Postal Service may enter into other agreements substantially similar to the China Post Group agreement. When this occurs, Inbound International Expedited Services 1 (CP2008–7) will be considered the product and the included individual agreements will be treated as price categories under the product.¹⁰

If the Postal Service determines that it has entered into an agreement substantially equivalent to the China Post Group agreement with another country, it may file such an agreement using the abbreviated requirements provided by rule 3015.5. In each case, the individual agreement must be filed with the Commission, and each agreement must meet the requirements of 39 U.S.C. 3633. The Postal Service shall identify all significant differences between the new agreement and the pre-existing product group. Such differences would include terms and conditions that impose new obligations or new requirements on any party to the agreement. The Commission will verify whether or not the second agreement is in fact substantially equivalent. Agreements that are not substantially equivalent will continue to have to meet the filing requirements provided by 39 CFR part 3020, subpart B. If this approach proves too cumbersome, alternative approaches may be considered.

Confidentiality of information. The Commission is aware that the treatment of information as confidential is a sensitive issue. The Postal Service, the Public Representative, and United Parcel Service all express valid concerns

¹⁰ This may require future modification of the China Post Group descriptive language.

⁷ PRC Order No. 43, Order Establishing Rate-making Regulations for Market Dominant and Competitive Products, October 29, 2008, para. 3019.

that the Commission will address in the future on a broader level.

In this docket, the Commission will take a limited first step to add transparency and facilitate the process of reviewing future agreements of this style. The Commission has reviewed the Governor's decision supporting the request provided as required by rule 3020.31(b), and has determined that most of the document does not pose a risk of competitive harm if disclosed. In fact, the Postal Service disclosed similar information associated with Docket Nos. CP2008–8, CP2008–9, and CP2008–10. The Postal Service is directed to file a redacted version of the Governor's decision provided under seal in Docket No. CP2008–6.¹¹

It is Ordered:

1. The China Post Group agreement is added as a product not of general applicability to the competitive product list under Inbound International Expedited Services as Inbound International Expedited Services 1 (CP2008–7).

2. The Postal Service shall provide the Commission with suggestions regarding the development of a consistent approach to organizing competitive product negotiated agreements within the Mail Classification Schedule by July 23, 2008.

3. The Postal Service shall file with the Commission a list of all ongoing Inbound International Expedited Services agreements and expiration dates separated by product, along with a copy of each agreement, by July 23, 2008.

4. The Postal Service shall file with the Commission a redacted version of the Governors' decision provided under seal in Docket No. CP2008–6 by July 23, 2008.

5. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Issued: June 27, 2008.

Steven W. Williams,
Secretary.

List of Subjects in 39 CFR Part 3020

Administrative practice and procedure; Postal Service.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 503, the Postal Regulatory Commission amends 39 CFR part 3020 as follows:

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

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

■ 2. In Appendix A to Subpart A of Part 3020 revise sections 1000 and 2000 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)s/Parcels

Periodicals

Within County Periodicals

Outside County Periodicals

Package Services

Single-Piece Parcel Post

Inbound Surface Parcel Post (at UPU rates)

Bound Printed Matter Flats

Bound Printed Matter Parcels

Media Mail/Library Mail

Special Services

Ancillary Services

International Ancillary Services

Address List Services

Caller Service

Change-of-Address Credit Card

Authentication

Confirm

International Reply Coupon Service

International Business Reply Mail Service

Money Orders

Post Office Box Service

Premium Forwarding Service (Experiment)

Negotiated Service Agreements

Discover Financial Services Negotiated

Service Agreement

Bank One Negotiated Service Agreement

HSBC North America Holdings Inc.

Negotiated Service Agreement

Bookspan Negotiated Service Agreement

1001 Market Dominant Product

Descriptions

* * * * *

Part B—Competitive Products

2000 Competitive Product List

Express Mail

Express Mail

Outbound International Expedited Services

Inbound International Expedited Services

Inbound International Expedited Services 1 (CP2008–7)

Priority Mail

Priority Mail

Outbound Priority Mail International

Inbound Air Parcel Post

Parcel Select

Parcel Return Service

International

International Priority Airlift (IPA)

International Surface Airlift (ISAL)

International Direct Sacks—M-Bags

Global Customized Shipping Services

Inbound Surface Parcel Post (at non-UPU rates)

International Money Transfer Service

International Ancillary Services

Negotiated Service Agreements

Domestic

Outbound International

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–1120; FRL–8693–5]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Reasonably Available Control Technology Requirements for Marine Vessel and Barge Loading

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires reasonably available control technology (RACT) for the control of volatile organic compound (VOC) emissions from marine vessel and barge loading. EPA is approving this SIP revision in accordance with the Clean Air Act (CAA).

DATES: *Effective Date:* This final rule is effective on August 18, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2007–1120. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) 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 for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania

¹¹ The redacted version should be filed under Docket No. MC2008–7. The Commission anticipates the redacted version will be similar in nature to what the Postal Service provided associated with Docket Nos. CP2008–8, CP2008–9, and CP2008–10 on June 16, 2008.