

## Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

#### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

\* \* \* \* \*

#### ANM ID E2 Coeur D’Alene, ID [Modified]

Coeur D’Alene—Pappy Boyington Field  
(Lat. 47°46’28” N, long 116°49’11” W)

That airspace within a 4.4-mile radius of the Coeur D’Alene—Pappy Boyington Field, and within 1.3 miles each side of the 183° bearing extending from the 4.4-mile radius to 6 miles south of the airport, and that airspace 1.8 miles each side of the 023° bearing extending from the 4.4-mile radius to 5 miles northeast of the airport. This Class E airspace is effective during the specific dates and times established in advance by a notice to airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

#### ANM WA E5 Coeur D’Alene, ID [New]

Coeur d’Alene—Pappy Boyington Field  
(Lat. 47°46’28” N, long 116°49’11” W)

That airspace within a 4.4-mile radius of the Coeur d’Alene—Pappy Boyington Field, and within 1.3 miles each side of the 183° bearing from the airport extending from the 4.4-mile radius to 10 miles south of the airport, and that airspace 4.4 miles each side of the 250° bearing from the Coeur d’Alene—Pappy Boyington Field extending from the 4.4-mile radius to 14.4 miles west of the airport and that airspace 1.8 miles each side of the 023° bearing from the Coeur d’Alene—Pappy Boyington Field extending from the 4.4-mile radius to 8 miles northeast from the airport.

Issued in Seattle, Washington, on July 29, 2020.

**Byron Chew,**

*Group Manager, Acting Operations Support Group, Western Service Center.*

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**BILLING CODE 4910–13–P**

## POSTAL SERVICE

### 39 CFR Part 113

#### Electronic Indicators for the Mailing of Hazardous and Perishable Materials

**AGENCY:** Postal Service™.

**ACTION:** Proposed revision for special standards; request for comment.

**SUMMARY:** The Postal Service proposes to amend the Publication 52, *Hazardous, Restricted, and Perishable Mail* (PUB 52) to provide unique electronic indicators and to standardize the Extra Services options for shipments of hazardous materials and perishable items.

**DATES:** Submit comments on or before September 8, 2020.

**ADDRESSES:** Mail or deliver written comments to the Manager, Product Classification, U.S. Postal Service, 475 L’Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name

and address of the commenter and send to [PCFederalRegister@usps.gov](mailto:PCFederalRegister@usps.gov), with a subject line of “Electronic Indicators”. Faxed comments will not be accepted.

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L’Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review Monday through Friday, 9 a.m. to 4 p.m., by calling 202–268–2906.

#### FOR FURTHER INFORMATION CONTACT:

Mary Collins at (202) 251–2291, Kevin Gunther at (202) 268–7208 or Dale Kennedy (202) 268–6592.

**SUPPLEMENTARY INFORMATION:** The Postal Service is proposing to amend PUB 52 with the provisions below and, once adopted, will incorporate the revised PUB 52 by reference into part 113, as well as make necessary edits to the *Domestic Mail Manual*. You may view the text of the proposed edits to PUB 52 at: <https://pe.usps.com/>.

1. Require Electronic Verification System (eVS) and ePostage mailers to transmit a Shipping Services File (SSF) to the Postal Service before, or concurrent with the tendering of hazardous materials shipments.

2. Specify three unique Service Type Codes (STC), each to correspond to hazardous materials outbound shipments via Priority Mail®, First-Class Package Service®, Parcel Select®, Parcel Select Lightweight®, and USPS Retail Ground®.

3. Specify that insurance will be the only Extra Service available with shipments of hazardous materials. The Postal Service intends to provide a unique STC for each product without an Extra Service (which would include basic USPS tracking provided as a built-in feature of these products), purchases of insurance less than or equal to \$500, and purchases of insurance over \$500.

4. Specify four unique STCs for Priority Mail Express® shipments to identify those shipments where the mailer is requesting a waived signature, requiring a signature, purchasing insurance less than or equal to \$500, or purchasing insurance over \$500.

5. Specify three unique STCs to correspond with hazardous materials return services via Parcel Return Service (PRS) Full Network, traditional PRS, Priority Mail Return Service®, First-Class Package Return Service®, and Ground Return Service®, where each

STC will correspond to the product and any of the Extra Service options described above for outbound shipments. The Postal Service also proposes to specify unique STCs to explicitly identify Division 6.2, Infectious Substances returned through Postal Service Networks using each of these return services.

6. Provide unique Extra Service Codes (ESC) intended to identify categories of hazardous materials with specific relevance to segregation, handling and identification in Postal Service networks.

7. Specify unique STCs and ESCs to identify and categorize shipments of live bees, and day-old poultry to include Extra Services or additional fees for these content types.

8. Provide for the optional use of hazardous and perishable materials electronic indicators before the end of the 2020 calendar year and to require their use at a later date.

### Overview

Due to the rapid expansion of eCommerce, the United States Postal Service® has encountered a significant increase in the number of hazardous material shipments going through the mail. Materials such as lithium batteries, flammable gases, non-flammable compressed gases, and corrosive cleaning solutions that were typically purchased through brick and mortar establishments are now routinely being purchased online and shipped to their destination. Additionally, with the outbreak of the Coronavirus (COVID-19) pandemic, there is a new emphasis on the transportation of infectious substances. This increase in hazardous material volume has brought with it a proportional increase in instances of improper labelling and packaging, use of ineligible shipping services, and an increase in safety related incidents in Postal Service facilities. These incidents have placed our employees, customers, and business partners in higher risks and resulted in millions of dollars in losses.

The Postal Service heavily relies on commercial cargo and passenger aircraft to transport mail in circumstances where the use of ground transportation is insufficient to meet its service standards or are otherwise operationally or financially impracticable. With regard to the transportation of hazardous materials, these commercial air carriers are subject to regulation by the Federal Aviation Administration (FAA), and the International Civil Aviation Organization (ICAO).

In accordance with FAA regulations, commercial air carriers are required to

develop and maintain a Safety Management System (SMS). In applying the safety risk management concept of their SMS, air carriers conduct a systemic analysis to identify hazards and then develop and maintain processes to analyze the safety risks associated with the hazards identified. This process requires air carriers to acquire data with respect to its operations, products, and services to monitor the safety performance of their operations and conduct and update their risk assessments. The Postal Service tenders mail, including packages containing both non-hazardous and hazardous materials to its contracted air carriers in sacks. Due to the “sacking” of hazardous materials from the Postal Service, air carriers are often unaware of the specific hazardous materials they are accepting and transporting. Subsequently, without this information, air carriers are unable to accurately define and address the risks associated with the mail.

### Proposal

To enhance its ability to make knowledgeable decisions regarding the handling and disposition of hazardous materials shipments in its networks and better leverage the use of its mechanized and automated systems to properly segregate and tender these items, the Postal Service proposes to require mailers to identify and categorize their hazardous materials shipments through the use of specified electronic indicators.

The Postal Service expects to use these indicators to provide details on the categories, volume and weight of the hazardous materials contained in packages tendered to its contracted transportation providers, and handle these packages in a safe and operationally efficient manner.

The Postal Service has enhanced its operational capability to provide piece-level tracking and visibility through the use of Intelligent Mail Package Barcodes (IMpb®). These barcodes are able to be scanned by automated processing equipment and Intelligent Mail scanning devices. Today, mailers are required to encode certain information into the barcode structure of the IMpb through the use of STCs and to encode additional information into a USPS-Approved SSF through the use of ESCs. As part of its package strategy, mailers tendering packages to the Postal Service are currently required to accurately encode their IMpb barcodes for each package and to supply a complete SSF concurrent with entering their packages into Postal Service Networks.

### Restriction of Extra Services

The Postal Service proposes to restrict the Extra Service options available for shipments of regulated hazardous materials to include only insurance over and under \$500 for most mail classes or products, and insurance over and under \$500 in addition to waiver of signature for Priority Mail Express. The Postal Service is proposing this restriction in order to reduce the complexity for mailers complying with the new requirements, and to limit the number of STCs needed to identify hazardous materials in the Postal Service systems. The Postal Service has a fairly large number of ESCs available for use for the purposes of these new requirements, but is very limited in the availability of STCs. This limitation in the number of available STCs is a primary concern in the proposed restriction for Extra Services available for use with hazardous materials shipments. The Postal Service expects the demand for the variety of Extra Services covered under this proposed restriction to be low enough for shippers of hazardous materials to generally be of minor concern.

### eVS and ePostage Users

The generation of the flight-specific air carrier manifests and the other operational enhancements proposed in this **Federal Register** Notice will be possible only when the information is included in a mailer's SSF, and is made available to all Postal Service systems in a timely fashion. It is for this reason that the Postal Service is proposing to require all impacted mailers to transmit an approved SSF before, or concurrent with, the physical tendering of regulated hazardous materials shipments to the Postal Service regardless of the postage payment method used. In addition to the other postage payment methods, this requirement would extend to mailers using electronic verification system (eVS).

### Postal Meter and Legacy Barcode Users

To ensure electronic information for all hazardous materials shipments are available and concurrent with their induction into its networks, the Postal Service proposes to restrict shipments of hazardous materials from mailers using postage meters not capable of electronically transmitting transactional data to the Postal Service, and any other mailers who may still be using legacy package barcodes. These mailers are urged to transition to newer systems or to bring their hazardous materials to a Postal Service retail unit for induction.

### *Service Type Codes and Extra Service Codes for Hazardous Materials*

The Postal Service proposes to specify three unique STCs, each to correspond to hazardous materials outbound shipments via Priority Mail, First-Class Package Service, Parcel Select, Parcel Select Lightweight, and USPS Retail Ground, and to provide a unique STC for each product without an Extra Service, requests for insurance less than or equal to \$500, and requests for insurance over \$500. The Postal Service also proposes to specify three unique STCs to correspond to hazardous materials return services shipments via the Parcel Return Service (PRS) Full Network, traditional PRS, Priority Mail Return Service, First-Class Package Return Service, and Ground Return Service, where each STC will correspond to the Extra Service options described above for outbound shipments, and to specify unique STCs to explicitly identify Division 6.2, Infectious Substances returned through Postal Service Networks using each of these return services. The Postal Service proposes unique STCs to identify Division 6.2 Infectious Substances because it believes this category of material is the most commonly shipped hazardous material in Postal Service Networks via a return service and the additional visibility into these shipments is beneficial to Postal Operations.

The Postal Service proposes to provide unique ESCs to identify specified categories of hazardous materials with specific relevance to segregation, handling and identification in Postal Service networks. The Postal Service plans to specify approximately 20 ESCs, each to identify a category of hazardous material that is associated with specific quantity restrictions, packaging and markings requirements, and for some ESCs, restrictions in air transportation. Included among the proposed categories to be assigned with a specific ESC, and intended for air transportation are:

- ID8000 Consumer Commodity
- Air-eligible Ethanol
- Excepted Quantity
- Division 5.1 Oxidizer
- Division 5.2 Organic Peroxide
- Division 6.1 Packaging Instruction 6B Toxic Material
- Class 8 Corrosive
- Class 8 Nonspillable battery
- Class 9 Dry Ice
- Class 9 Magnetized Material
- Class 9 Lithium Battery (marked)
- Class 9 Lithium Battery (unmarked)

The Postal Service has also specified proposed ESCs to correspond with

categories of hazardous materials shipments intended for ground transportation, but will not specifically list them in this notice.

The Postal Service expects to have these STCs and ESCs available for optional use by mailers before the end of the 2020 calendar year. The Postal Service will work with the mailing industry to determine when the majority of mailers will be able to prepare their systems for the new requirements, and will announce a mandatory use date later this year.

### *STCs and ESCs for Perishable Materials Specifically Live Animals*

In addition to the electronic indicators specific to hazardous materials, the Postal Service is also proposing new STCs and ESCs applicable to shipments of live animals. These indicators are intended to identify and categorize mailable live animal shipments, and provide necessary package-level details for perishable materials shipments when they include special pricing assessments. These required indicators will be leveraged within the new Package Platform initiative, enabling Postal Service permit systems to identify the shipments, and to ensure proper and accurate automated postage assessments and payment. These perishable materials indicators will specify additional charges applicable to live animals, such as the live animal transportation fee charged by airlines when specific types of live animals are shipped via air transportation, or Special Handling-Fragile fees when required by standards or when optionally requested by the mailer. Once fully implemented, use of these STCs and ESCs will be required for all mailings of live animals under the categories specified.

### *International Shipments*

Most international packages do not include an IMpb, and will not have a STC associated with the package. However, during the postage payment process for most international packages, a SSF is generated and transmitted to the Postal Service. The Postal Service proposes to require mailers to include the hazardous materials ESCs applicable to the category of material being shipped. In accordance with *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM<sup>®</sup>) part 135, only four categories of hazardous materials are permitted in international mail. Hazardous materials permitted in international mail are restricted to:

- Division 6.2, Infectious Substances (permitted only by authorization from Product Classification, USPS<sup>®</sup> Headquarters)
- Class 7, Radioactive Materials
- Class 9, Magnetic Materials
- Class 9, Lithium Batteries installed in equipment (unmarked)

The Postal Service expects to provide access to the STCs applicable to these hazardous materials categories for use with international mail.

### *Systems Enhancements*

To provide greater visibility into the quantities, weights, and categories of hazardous materials being tendered to its contracted air carriers, the Postal Service plans to provide an electronic and hardcopy (if needed) manifest to the pilot of each flight carrying hazardous materials in the mail. The Postal Service expects to supply this manifest, similar to a commercial air waybill, prior to physically tendering the mail to the air carrier. The manifest will supply the details on the categories of hazardous materials offered for transportation on each flight. The information will be provided from the electronic indicators supplied by mailers under these proposed requirements, and will be detailed under each of the hazardous materials categories specified for air transportation as previously specified in the notice. The Postal Service believes these detailed manifests will result in greater confidence in the safety of the pilot, crew, and the public traveling on passenger aircraft that also carry mail. The manifests will also supply hazardous materials content information sufficient to enable air carriers to better analyze their safety risks associated with the mail in the development of their SMS.

These electronic indicators will also provide the ability of Postal Operations to identify packages containing hazardous materials and the categories under which they fall. This additional information will allow the separation or consolidation of hazardous materials packages as necessary to meet operational requirements and allow Operations to affix the applicable markings when necessary to the container. If this proposal is adopted, Postal Operations will review its systems and processes and will investigate the feasibility of adopting enhancements using the hazardous materials data provided by these proposed requirements.

If this proposal is adopted, the revisions to postage payment platforms may enable the Postal Service to build in safeguards to notify its mailers when they attempt to combine a product that

is incompatible with the selected category of hazardous material. For example, the Postal Service may be able to warn (or lock out) a mailer during the postage payment process, when the mailer attempts to combine an air-eligible product (e.g., First-Class Package Service or Priority Mail) with a category of hazardous material restricted to ground transportation only (e.g. limited quantity ground material or flammable solid). If this proposal is adopted, the Postal Service plans to review its systems to determine if such an enhancement is possible and practical.

#### Enforcement

If this proposal is adopted, the United States Postal Inspection Service® (USPIS®) expects universal compliance by mailers following a reasonable period of time to communicate the new requirements to mailers and postage payment providers, and for them to make the necessary changes to their systems. Following the implementation period, the USPIS intends to enforce these new requirements using its civil penalty authority under 39 U.S.C. 3018.

**Brittany Johnson,**

*Attorney, Federal Compliance.*

[FR Doc. 2020-15773 Filed 8-5-20; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 412

[CMS-1739-P]

RIN 0938-AU24

### Medicare Program; Treatment of Medicare Part C Days in the Calculation of a Hospital's Medicare Disproportionate Patient Percentage

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish a policy concerning the treatment of patient days associated with persons enrolled in a Medicare Part C (also known as “Medicare Advantage”) plan for purposes of calculating a hospital's disproportionate patient percentage for cost reporting periods starting before fiscal year (FY) 2014 in response to the ruling in *Azar v. Allina Health Services*, 139 S. Ct. 1804 (June 3, 2019).

**DATES:** To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on EDT on October 5, 2020.

**ADDRESSES:** In commenting, please refer to file code CMS-1739-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the “Submit a comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1739-P, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-1739-P, Mail Stop C4-26-05, 7500 Security Boulevard, Baltimore, MD 21244-1850.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

#### **FOR FURTHER INFORMATION CONTACT:**

Donald Thompson (410) 786-4487.

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that website to view public comments.

### **I. Executive Summary and Background**

#### *A. Purpose and Legal Authority*

This proposed rule would create a policy governing the treatment of days associated with beneficiaries enrolled in Medicare Part C for discharges occurring prior to October 1, 2013, for the purposes of determining the additional Medicare payments to subsection (d) hospitals under section 1886(d)(5)(F) of the Social Security Act (the Act).

#### *B. Summary of Major Provisions*

Section 1886(d)(5)(F) of the Act provides for additional Medicare payments to subsection (d) hospitals that serve a significantly disproportionate number of low income patients. The Act specifies two methods by which a hospital may qualify for the Medicare disproportionate share hospital (DSH) payment adjustment. Under the first method, hospitals that are located in an urban area and have 100 or more beds may receive a Medicare DSH payment adjustment if the hospital can demonstrate that, during its cost reporting period, more than 30 percent of its net inpatient care revenues are derived from State and local government payments for care furnished to needy patients with low incomes. This method is commonly referred to as the “Pickle method.” The second method for qualifying for the DSH payment adjustment, which is more common, is based on a complex statutory formula under which the DSH payment adjustment is based on the hospital's geographic designation, the number of beds in the hospital, and the hospital's disproportionate patient percentage (DPP). A hospital's DPP is the sum of two fractions: The “Medicare fraction” and the “Medicaid fraction.” The Medicare fraction (also known as the SSI fraction or SSI ratio) is computed by dividing the number of the hospital's inpatient days that are furnished to patients who were entitled to both Medicare Part A and Supplemental Security Income (SSI) benefits by the hospital's total number of patient days furnished to patients entitled to benefits under Medicare Part A. The Medicaid fraction is computed by dividing the hospital's number of inpatient days furnished to patients who, for such days, were eligible for Medicaid, but were not entitled to benefits under Medicare Part A, by the hospital's total number of inpatient days in the same period.

Because the DSH payment adjustment is part of the inpatient prospective payment system (IPPS), the statutory references to “days” in section 1886(d)(5)(F) of the Act have been interpreted to apply only to hospital acute care inpatient days. Regulations located at 42 CFR 412.106 govern the Medicare DSH payment adjustment and specify how the DPP is calculated as well as how beds and patient days are counted in determining the Medicare DSH payment adjustment.

#### *C. Summary of Costs and Benefits*

If we adopted our proposal to include days associated with patients enrolled