

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 023-1 and Commandant Instruction M16475.ID, which guide 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. This rule involves changing and disestablishing a security 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. Revise § 165.1102 to read as follows:

§ 165.1102 Security Zone; Naval Base Point Loma; San Diego Bay, San Diego, CA.

(a) *Location*. The following area is a security zone: The water adjacent to the Naval Base Point Loma, San Diego, CA, enclosed by the following coordinates: 32°42.48' N, 117°14.22' W (Point A);

32°42.48' N, 117°14.21' W (Point B); 32°42.17' N, 117°14.05' W (Point C); 32°41.73' N, 117°14.21' W (Point D); 32°41.53' N, 117°14.23' W (Point E); 32°41.55' N, 117°14.02' W (Point F); 32°41.17' N, 117°13.95' W (Point G); 32°41.17' N, 117°13.97' W (Point H); thence running generally north along the shoreline to Point A.

(b) *Regulations*. (1) The general regulations governing security zones found in 33 CFR 165.33 apply to the security zone described in paragraph (a) of this section.

(2) Entry into, or remaining in, the area of this zone is prohibited unless authorized by the Captain of the Port San Diego; Commanding Officer, Naval Base Point Loma; or Commander, Navy Region Southwest.

(3) Persons desiring to transit the area of the security zone may request permission from the Captain of the Port San Diego at telephone number (619) 278-7033 or on VHF channel 16 (156.8 MHz) or from either the Commanding Officer, Naval Base Point Loma or the Commander, Navy Region Southwest by calling the Navy Port Operation Dispatch at telephone number (619) 556-1433 or on VHF-FM channels 16 or 12. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port San Diego or his or her designated representative.

(c) *Definitions*. For purposes of this section: *Captain of the Port San Diego*, means the Commanding Officer of the Coast Guard Sector San Diego; *Commander, Navy Region Southwest*, means Navy Region Commander responsible for the Southwest Region; *Commanding Officer, Naval Base Point Loma*, means the Installation Commander of the naval base located on Point Loma, San Diego, California; *Designated Representative*, means any U.S. Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port San Diego to assist in the enforcement of the security zone described in paragraph (a) of this section.

(d) *Enforcement*. The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone described in paragraph (a) of this section by the U.S. Navy and local law enforcement agencies.

■ 3. Remove § 165.1103.

Dated: May 1, 2009.

T.H. Farris,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. E9-23642 Filed 9-30-09; 8:45 am]

BILLING CODE 4910-15-P

POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2009-40 and CP2009-61; Order No. 295]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adding Parcel Select & Parcel Return Service Contract 2 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 October 1, 2009 and is applicable beginning September 4, 2009.

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

SUPPLEMENTARY INFORMATION:

Regulatory History, 74 FR 44881 (August 31, 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 Parcel Select & Parcel Return Service Contract 2 to the Competitive Product List. For the reasons discussed below, the Commission approves the Request.

II. Background

On August 21, 2009, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30, *et seq.*, to add Parcel Select & Parcel Return Service Contract 2 to the Competitive Product List.¹ The Postal Service asserts that the Parcel Select & Parcel Return Service Contract 2 product is a competitive product “not of general applicability” within the meaning of 39 U.S.C. 3632(b)(3). *Id.* at 1. The Request has been assigned Docket No. MC2009-40.

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. *Id.* The contract has been assigned Docket No. CP2009-61.

¹ Request of the United States Postal Service to Add Parcel Select & Parcel Return Service Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, August 21, 2009 (Request).

In support of its Request, the Postal Service filed the following materials: (1) A redacted version of the Governors' Decision authorizing the new product which also includes an analysis of Parcel Select & Parcel Return Service Contract 2 and certification of the Governors' vote;² (2) a redacted version of the contract which, among other things, provides (a) that the effective date of the contract is the day after the date on which the Commission issues all regulatory approvals, and (b) that the contract will expire on May 31, 2011, unless it is extended for an additional year;³ (3) requested changes in the Mail Classification Schedule product list;⁴ (4) a Statement of Supporting Justification as required by 39 CFR 3020.32;⁵ (5) a certification of compliance with 39 U.S.C. 3633(a);⁶ and (7) an application for non-public treatment of materials.⁷

In the Statement of Supporting Justification, Daniel J. Barrett, Manager, Sales Strategy and Customer Support, Ground Shipping Services, 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 increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Mr. Barrett contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.* 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 E.

The Postal Service filed much of the supporting materials, including the unredacted Governors' Decision, the unredacted contract, and supporting financial analysis,⁸ under seal. In its application for non-public treatment of materials, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions,

and financial projections, should remain confidential. *Id.*, Attachment F.

In Order No. 288, the Commission gave notice of the two dockets, appointed a public representative, requested supplemental information, and provided the public with an opportunity to comment.⁹ On August 27, 2009, the Postal Service filed a response to the Commission's request for supplemental information.¹⁰

III. Comments

Comments were filed by the Public Representative.¹¹ No filings were submitted by other interested parties. The Public Representative states that the Postal Service's filing and the Parcel Select & Parcel Return Service Contract 2 agreement comply with applicable Commission rules of practice. *Id.* at 3. He also addresses the relationship between the data systems used to calculate costs in this case and the Postal Service's proposal to change that established methodology as "proposal fourteen" in Commission Docket No. RM2009-10. Specifically, he notes that "the Commission's determination on the costing methodology might impact the data supplied for the instant contract." *Id.* at 4. However, the Public Representative "concede[s] that pricing for this PS&PRS NSA appears to fully comply with the three-pronged requirements of 39 U.S.C. 3633(a), and with the other pricing, cost coverage, and contribution provisions of title 39." *Id.*

The Public Representative believes that the Postal Service has provided adequate justification for maintaining confidentiality in this case. *Id.* at 2. He also believes that because the contract is designed to help acquire new volume, the contract appears to benefit the general public. *Id.* at 5.

IV. Commission Analysis

The Commission has reviewed the Request, the contract, the financial analysis provided under seal, the supplemental information filed by the Postal Service, and the comments filed by the Public Representative.

Statutory requirements. The Commission's statutory responsibilities

in this instance entail assigning Parcel Select & Parcel Return Service Contract 2 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 Parcel Select & Parcel Return Service Contract 2 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 D, at 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 ground shipping 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 ground shipping 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 Parcel Select & Parcel Return Service Contract 2 as

² Attachment A to the Request. The analysis that accompanies the Governors' Decision notes, among other things, that the contract will result in new and more profitable volume for the Postal Service.

³ Attachment B to the Request.

⁴ Attachment C to the Request.

⁵ Attachment D to the Request.

⁶ Attachment E to the Request.

⁷ Attachment F to the Request.

⁸ The Commission appreciates the Postal Service's efforts to ensure its financial analysis is complete and thorough. The financial analysis filed in this docket should serve as a model for future requests.

⁹ PRC Order No. 288, Notice and Order Concerning Parcel Select & Parcel Return Service Contract 2 Negotiated Service Agreement, August 25, 2009 (Order No. 288).

¹⁰ Response of the United States Postal Service to Request for Supplemental Information in Order No. 288, August 27, 2009.

¹¹ Public Representative Comments in Response to United States Postal Service Request to Add Parcel Select & Parcel Return Service Contract 2 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, September 2, 2009 (Public Representative Comments).

competitive. Having considered the statutory requirements and the support offered by the Postal Service, the Commission finds that Parcel Select & Parcel Return Service Contract 2 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 Parcel Select & Parcel Return Service Contract 2 ensures 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 Parcel Select & Parcel Return Service Contract 2 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 Parcel Select & Parcel Return Service Contract 2 indicates that it comports with the provisions applicable to rates for competitive products.

In his comments, the Public Representative raises the issue of the pending Parcel Select and Parcel Return Service methodological changes. See Docket No. RM2009-10, Proposal Fourteen. In the instant filing, the Postal Service correctly uses the current approved methodology concerning Parcel Select and Parcel Return Service Transportation and Mail Processing costs. Nevertheless, the Commission believes the changes presented in Proposal Fourteen, if approved, would not harm the potential profitability of this contract.

Application for non-public treatment. The Postal Service believes that the 10-year period of non-public treatment, as specified in 39 U.S.C. 3007.30, is insufficient to protect customer identifying information. Notice, Attachment F, at 6. It asserts that such information should be protected permanently and requests that the Commission enter an order extending that duration indefinitely.

The request is premature. Should the need for non-public treatment remain due to ongoing business relationships, the Postal Service may submit a motion to the Commission to extend the duration at the appropriate time.

Other considerations. The Postal Service shall notify the Commission if the contract is extended for an additional year. 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.

In conclusion, the Commission approves Parcel Select & Parcel Return Service Contract 2 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. Parcel Select & Parcel Return Service Contract 2 (MC2009-40 and CP2009-61) 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 the contract is extended for an additional year 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**.

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 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] | [Reserved for Product Description] | Express Mail & Priority Mail Contract 8 (MC2009–33 and CP2009–44) |
| Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description] | International Reply Coupon Service [Reserved for Product Description] | Parcel Select & Parcel Return Service Contract 2 (MC2009–40 and CP2009–61) |
| Bound Printed Matter Flats [Reserved for Product Description] | International Business Reply Mail Service [Reserved for Product Description] | Parcel Return Service Contract 1 (MC2009– 1 and CP2009–2) |
| Bound Printed Matter Parcels [Reserved for Product Description] | Money Orders [Reserved for Product Description] | Priority Mail Contract 1 (MC2008–8 and CP2008–26) |
| Media Mail/Library Mail [Reserved for Product Description] | Post Office Box Service [Reserved for Product Description] | Priority Mail Contract 2 (MC2009–2 and CP2009–3) |
| Special Services [Reserved for Class Description] | Negotiated Service Agreements [Reserved for Class Description] | Priority Mail Contract 3 (MC2009–4 and CP2009–5) |
| Ancillary Services [Reserved for Product Description] | HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description] | Priority Mail Contract 4 (MC2009–5 and CP2009–6) |
| Address Correction Service [Reserved for Product Description] | Bookspan Negotiated Service Agreement [Reserved for Product Description] | Priority Mail Contract 5 (MC2009–21 and CP2009–26) |
| Applications and Mailing Permits [Reserved for Product Description] | Bank of America Corporation Negotiated Service Agreement | Priority Mail Contract 6 (MC2009–25 and CP2009–30) |
| Business Reply Mail [Reserved for Product Description] | The Bradford Group Negotiated Service Agreement | Priority Mail Contract 7 (MC2009–25 and CP2009–31) |
| Bulk Parcel Return Service [Reserved for Product Description] | Part B—Competitive Products | Priority Mail Contract 8 (MC2009–25 and CP2009–32) |
| Certified Mail [Reserved for Product Description] | 2000 Competitive Product List | Priority Mail Contract 9 (MC2009–25 and CP2009–33) |
| Certificate of Mailing [Reserved for Product Description] | Express Mail | Priority Mail Contract 10 (MC2009–25 and CP2009–34) |
| Collect on Delivery [Reserved for Product Description] | Express Mail | Priority Mail Contract 11 (MC2009–27 and CP2009–37) |
| Delivery Confirmation [Reserved for Product Description] | Outbound International Expedited Services | Priority Mail Contract 12 (MC2009–28 and CP2009–38) |
| Insurance [Reserved for Product Description] | Inbound International Expedited Services 1 (CP2008–7) | Priority Mail Contract 13 (MC2009–29 and CP2009–39) |
| Merchandise Return Service [Reserved for Product Description] | Inbound International Expedited Services 2 (MC2009–10 and CP2009–12) | Priority Mail Contract 14 (MC2009–30 and CP2009–40) |
| Parcel Airlift (PAL) [Reserved for Product Description] | Priority Mail | Priority Mail Contract 15 (MC2009–35 and CP2009–54) |
| Registered Mail [Reserved for Product Description] | Priority Mail | Priority Mail Contract 16 (MC2009–36 and CP2009–55) |
| Return Receipt [Reserved for Product Description] | Outbound Priority Mail International | Priority Mail Contract 17 (MC2009–37 and CP2009–56) |
| Return Receipt for Merchandise [Reserved for Product Description] | Inbound Air Parcel Post | Outbound International |
| Restricted Delivery [Reserved for Product Description] | Royal Mail Group Inbound Air Parcel Post Agreement | Direct Entry Parcels Contracts |
| Shipper-Paid Forwarding [Reserved for Product Description] | Parcel Select | Direct Entry Parcels 1 (MC2009–26 and CP2009–36) |
| Signature Confirmation [Reserved for Product Description] | Parcel Return Service | Global Direct Contracts (MC2009–9, CP2009–10, and CP2009–11) |
| Special Handling [Reserved for Product Description] | International | Global Expedited Package Services (GEPS) Contracts |
| Stamped Envelopes [Reserved for Product Description] | International Priority Airlift (IPA) | 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 [Reserved for Product Description] | International Surface Airlift (ISAL) | Global Expedited Package Services 2 (CP2009–50) |
| Premium Stamped Stationery [Reserved for Product Description] | International Direct Sacks—M-Bags | Global Plus Contracts |
| Premium Stamped Cards [Reserved for Product Description] | Global Customized Shipping Services | Global Plus 1 (CP2008–8, CP2008–46 and CP2009–47) |
| International Ancillary Services [Reserved for Product Description] | Inbound Surface Parcel Post (at non-UPU rates) | Global Plus 2 (MC2008–7, CP2008–48 and CP2008–49) |
| International Certificate of Mailing [Reserved for Product Description] | Canada Post—United States Postal service | Inbound International |
| International Registered Mail [Reserved for Product Description] | Contractual Bilateral Agreement for Inbound Competitive Services (MC2009– 8 and CP2009–9) | Inbound Direct Entry Contracts with Foreign Postal Administrations (MC2008–6, CP2008–14 and CP2008–15) |
| International Return Receipt [Reserved for Product Description] | International Money Transfer Service | International Business Reply Service Competitive Contract 1 (MC2009–14 and CP2009–20) |
| International Restricted Delivery [Reserved for Product Description] | International Ancillary Services | Competitive Product Descriptions |
| Address List Services [Reserved for Product Description] | Special Services | Express Mail |
| Caller Service [Reserved for Product Description] | Premium Forwarding Service | [Reserved for Group Description] |
| Change-of-Address Credit Card Authentication [Reserved for Product Description] | Negotiated Service Agreements | Express Mail [Reserved for Product Description] |
| Confirm | Domestic | Outbound International Expedited Services [Reserved for Product Description] |
| | Express Mail Contract 1 (MC2008–5) | Inbound International Expedited Services [Reserved for Product Description] |
| | Express Mail Contract 2 (MC2009–3 and CP2009–4) | Priority |
| | 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) | |

[Reserved for Product Description]
 Priority Mail
 [Reserved for Product Description]
 Outbound Priority Mail International
 [Reserved for Product Description]
 Inbound Air Parcel Post
 [Reserved for Product Description]
 Parcel Select
 [Reserved for Group Description]
 Parcel Return Service
 [Reserved for Group Description]
 International
 [Reserved for Group Description]
 International Priority Airlift (IPA)
 [Reserved for Product Description]
 International Surface Airlift (ISAL)
 [Reserved for Product Description]
 International Direct Sacks—M—Bags
 [Reserved for Product Description]
 Global Customized Shipping Services
 [Reserved for Product Description]
 International Money Transfer Service
 [Reserved for Product Description]
 Inbound Surface Parcel Post (at non-UPU rates)
 [Reserved for Product Description]
 International Ancillary Services
 [Reserved for Product Description]
 International Certificate of Mailing
 [Reserved for Product Description]
 International Registered Mail
 [Reserved for Product Description]
 International Return Receipt
 [Reserved for Product Description]
 International Restricted Delivery
 [Reserved for Product Description]
 International Insurance
 [Reserved for Product Description]
 Negotiated Service Agreements
 [Reserved for Group Description]
 Domestic
 [Reserved for Product Description]
 Outbound International
 [Reserved for Group Description]
 Part C—Glossary of Terms and Conditions
 [Reserved]
 Part D—Country Price Lists for International Mail [Reserved]

[FR Doc. E9-23687 Filed 9-30-09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS-1538-CN]

RIN 0938-AP56

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2010; Correction

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

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors that appeared in the

final rule published in the **Federal Register** on August 7, 2009 entitled “Inpatient Rehabilitation Facility Prospective Payment System for Federal Fiscal Year 2010” (74 FR 39762).

DATES: *Effective Date.* The correction to the average length of stay value for CMG 0501, tier 2, in Table 1 on page 39768 of the final rule (74 FR 39762) is effective October 1, 2009. The correction to the preamble text at the top of the middle column of page 39791 of the final rule (74 FR 39762) is effective January 1, 2010.

FOR FURTHER INFORMATION CONTACT: Susanne Seagrave, (410) 786-0044.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E9-18616 of August 7, 2009 (74 FR 39762), there are technical errors that we are identifying and correcting in the Correction of Errors section below. The corrections in this notice are effective as if they were included in the final rule published on August 7, 2009. Accordingly, the correction to the average length of stay value for CMG 0501, tier 2, in Table 1 on page 39768 of the final rule (74 FR 39762) is effective October 1, 2009. This change is applicable for IRF discharges occurring on or after October 1, 2009 and on or before September 30, 2010 (FY 2010). The correction to the preamble text at the top of the middle column of page 39791 of the final rule is effective January 1, 2010.

II. Summary of Errors

In the August 7, 2009 final rule (74 FR 39762), the average length of stay value for CMG 0501, tier 2, in Table 1 on page 39768 should have been listed as 10, but was inadvertently listed as 0. In the FY 2010 IRF PPS proposed rule (74 FR 21052 at 21057), we proposed the average length of stay value for CMG 0501, tier 2, as 10. The proposal was based on FY 2007 IRF claims data, which was the most recent available data we had at the time. The updated FY 2008 data that we used for the final rule contained no IRF cases for CMG 0501, tier 2. When there are not enough cases in a particular CMG and tier (referred to herein as a “payment group”) to calculate an average length of stay, we combine the cases in that payment group with the next highest-paying payment group to calculate an average length of stay value. Accordingly, for the final rule, we used the average length of stay value of 10 from CMG 0501, tier 1 for CMG 0501, tier 2, but in Table 1 we inadvertently indicated a value of 0 instead of 10. Thus, we are correcting Table 1 to show

the average length of stay value for CMG 0501, tier 2, is 10.

In addition, we are correcting certain language in the preamble that could be misread, resulting in confusion with the regulatory requirements that must be met with respect to the preadmission screening required under § 412.622(a)(4)(A). Section 412.622(a)(4)(A) requires that the comprehensive preadmission screening be conducted by a licensed or certified clinician(s) designated by the rehabilitation physician described in § 412.622(a)(3)(iv) within 48 hours immediately preceding the IRF admission. Our policy is that the IRF personnel conducting the screening must be a clinician or group of clinicians who are appropriately trained and qualified to assess the patient’s medical and functional status, assess the risk for clinical and rehabilitation complications, and assess other aspects of the patient’s condition both medically and functionally. As we stated in the final rule, we do not believe that non-clinical personnel can adequately perform these assessments. In the final rule (74 FR 39791), we stated that, “* * * we believe that the IRF personnel involved in collecting the information for the preadmission screening must be appropriately trained and qualified to assess the patient’s medical and functional status, assess the risk for clinical and rehabilitation complications, and assess other aspects of the patient’s condition both medically and functionally” (emphasis added). As the discussion in which this sentence was embedded only pertained to clinical staff assessments under § 412.622(a)(4)(A), we should have utilized terminology that referenced “clinical staff” and “assessment,” not “IRF personnel” and “collecting.” Consistent with the discussion in which the statement appears, we meant to convey that the IRF clinical staff conducting the preadmission screening must be trained and qualified to make the appropriate assessments. The appropriate use of non-clinical staff in the collection of the information that is used in the § 412.622(a)(4)(A) assessment is beyond the scope of the preamble discussion. Therefore, to eliminate any confusion, we are revising the sentence in the middle column at the top of page 39791 of the final rule to read, “* * * we believe that the clinician(s) conducting the preadmission screening must be appropriately trained and qualified to assess the patient’s medical and functional status, assess the risk for clinical and rehabilitation