

provided with a phase-in period through January 1, 2004.

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SUPPLEMENTARY INFORMATION: On December 19, 2002, the Postal Service published a proposed rule in the **Federal Register** (67 FR 77726-77737) that proposed revisions to the standards in DMM C023 for mailing Division 6.2 infectious substances. The proposal was initiated to align the Postal Service standards with the DOT Federal regulations in 49 CFR and to make other minor changes and clarifications to the related mailing standards in DMM C021, C023, C024, C050, and F010.

Part A of this document provides background information on why the Postal Service needs to adopt these changes. Part B identifies and responds to the comments received by the Postal Service on the proposed rule. Part C summarizes the changes adopted by the Postal Service in this final rule. The actual changes to the DMM appear at the end of this final rule.

Part A—Background Information

The carriage of U.S. mail by the United States Postal Service (Postal Service) is regulated by Title 39 Code of Federal Regulations (39 CFR). Unlike commercial carriers, the Postal Service is not subject to the Federal regulations of the U.S. Department of Transportation (DOT) in Title 49 Code of Federal Regulations (49 CFR). The Postal Service is, however, subject to the legal restrictions in Title 18 United States Code 1716 (18 U.S.C. 1716) which prohibits the mailing of * * * “all disease germs, or scabs, and all other natural or artificial articles, compositions, or material which may kill or injure another, or injure the mails or other property” * * * if that matter is outwardly or of its own force dangerous to life, health, or property. Accordingly, for legal and safety reasons, the mailing standards for hazardous materials in the Domestic Mail Manual (DMM) not only closely adhere to the DOT regulations in 49 CFR, but also include many additional limitations and prohibitions.

In many instances, the Postal Service standards are more restrictive than the DOT requirements that apply to shipments being transported in domestic commerce. As an example, commercial shippers are permitted under the DOT regulations in 49 CFR to send certain types of flammable materials via air transportation. In contrast, the Postal Service prohibits the mailing of all flammable materials via air transportation.

Under Postal Service mailing standards, most hazardous materials are nonmailable. With few exceptions, the Postal Service generally limits the mailing of hazardous materials to only those materials that can be reclassified as an ORM-D material under the DOT Federal regulations in 49 CFR 173.144 and that can be renamed with the proper shipping name of “Consumer Commodity.” Additionally, mailable hazardous materials must meet the Postal Service quantity and packaging requirements, which in many instances are more restrictive than the DOT requirements in 49 CFR. Of all regulated hazardous materials, ORM-D materials present the lowest level of risk during handling and transportation.

Over the past few years, the Postal Service has encountered increasing difficulties with the commercial carriers who are contracted to provide air transportation services for the carriage of U.S. mail. Many carriers have refused to transport mailpieces containing mailable hazardous materials. In some instances, an air carrier has established a corporate policy not to carry hazardous materials. In other cases, an air carrier has refused to carry a specific type of hazardous material (e.g., diagnostic specimens) because Postal Service packaging standards, which met Federal standards, did not meet the international standards followed by the air carrier industry.

To ensure an acceptable level of safety and to facilitate domestic and international transportation, the Postal Service is adopting some of the regulatory and packaging changes for Division 6.2 infectious substances that DOT adopted as revisions to 49 CFR in the **Federal Register** (67 FR 53117-53144 and 67 FR 54967). The DOT changes are consistent with the current international standards found in the *Technical Instructions for the Safe Transport of Dangerous Goods* published by the International Civil Aviation Organization (ICAO).

It should also be noted that many of the DOT Federal regulations in 49 CFR involve requirements for the transport of hazardous materials that have moderate, high, or very high risk levels and that are shipped in very large quantities (exceeding 70 pounds in weight). Such hazardous materials are not permitted in the U.S. mail due to the legal restrictions in 18 U.S.C. 1716, concerns for employee and public safety, and Postal Service size and weight limitations. Accordingly, the Postal Service is adopting only the DOT regulations for Division 6.2 infectious substances that apply to materials that can be safely handled in the U.S. mail.

As an example, the Postal Service will not adopt the new DOT bulk packaging options for regulated medical waste because under DOT regulations in 49 CFR, a bulk packaging is defined as a receptacle that has a capacity greater than 450L (119 gallons) for liquid materials or a net mass greater than 400 kg (882 pounds) for solid materials. As established by law, the maximum size and weight limits per mailpiece are 70 pounds and 108 inches in combined length and girth (130 inches for Parcel Post). A bulk packaging receptacle as defined by DOT is nonmailable in the U.S. mail because it exceeds the maximum size and weight limits for mailing and it also would pose an unacceptable risk level during Postal Service transport and handling.

Part B—Comments on the Proposed Rule

On December 19, 2002, the Postal Service published a proposed rule in the **Federal Register** (67 FR 77726-77737) that provided information on the revisions to the mailing standards in the DMM that the Postal Service proposed to adopt. The Postal Service solicited comments on the proposed rule from members of the general public and responses were received from nine parties. The parties represented: four authorized sharps mailers; three commercial medical laboratories that process diagnostic (clinical) specimens received through the mail; one institute comprised of two separate trade associations that represented members involved in private waste services and manufacturing businesses; and one law firm representing a group of manufacturers of healthcare products.

The comments received generally fell into one of the following four categories: comments on the proposed effective date; comments on the proposed rules for diagnostic (clinical) specimens; comments on the proposed rules for mailable types of regulated medical waste and sharps waste; and comments in support of the Postal Service proposed rule. A summary of the comments grouped by category is detailed in items 1 through 4.

1. Comments Related to the Effective Date of the Final Rule

Four commenters, including three of the sharps mailers and the institute, opposed the Postal Service proposal of an effective date of April 30, 2003. Two of the sharps mailers requested an effective date of six months after the date of the final rule, while the other two commenters requested an effective date of one year after the date of the final rule. All commenters felt that a