

under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

### Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule affects only VA beneficiaries and does not affect a substantial number of small entities. Because this rule updates an existing regulation to make it consistent with existing statutory authority and reflect current and long-standing VA practices, VA anticipates no additional expenditures or actions as a result of this rule. Therefore, under 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

### Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a “significant regulatory action” requiring review by the Office of Management and Budget (OMB) as “any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.”

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been

determined not to be a significant regulatory action under Executive Order 12866.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more, adjusted annually for inflation, in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

### Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.024, VA Homeless Providers Grant and Per Diem Program.

### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John R. Gingrich, Chief of Staff, Department of Veterans Affairs, approved this document on November 19, 2012, for publication.

### List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Government contracts, Grant programs—health, Government programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Veterans.

Dated: November 21, 2012.

**Robert C. McFetridge,**

*Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.*

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

### PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 38 U.S.C. 501, and as noted in specific sections.

■ 2. Revise § 17.52(a)(2)(ii) to read as follows:

#### § 17.52 Hospital care and medical services in non-VA facilities.

(a) \* \* \*

(2) \* \* \*

(ii) A veteran who has been furnished hospital care, nursing home care, domiciliary care, or medical services, and requires medical services to complete treatment incident to such care or services (each authorization for non-VA treatment needed to complete treatment may continue for up to 12 months, and new authorizations may be issued by VA as needed), and

\* \* \* \* \*

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### POSTAL SERVICE

#### 39 CFR Part 111

#### New Marking Standards for Parcels Containing Hazardous Materials

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) 601.10 to adopt new mandatory marking standards for parcels containing mailable hazardous material that will align with the revised requirements provided by the Department of Transportation (DOT). This revision also provides terminology and categorization changes needed to respond to the pending elimination of the “Other Regulated Material” (ORM–D) category and the partial elimination of the “consumer commodity” category by the DOT.

**DATES:** Effective January 1, 2013.

**FOR FURTHER INFORMATION CONTACT:** Kevin Gunther at 202–268–7208.

**SUPPLEMENTARY INFORMATION:** The Postal Service will revise DMM 601.10, and

make corresponding revisions to Publication 52, *Hazardous, Restricted, and Perishable Mail*, chapters 2, 3 and 7, and Appendices A and C, to adopt new marking standards for parcels containing mailable hazardous materials. In August 2012, these marking standards were added to the DMM for optional-use by mailers and supplement the previously authorized DMM marking standards for parcels containing mailable hazardous materials.

With this revision, the Postal Service will require the use of these markings on parcels intended for air and surface transportation. However, the new markings standards will be deferred for parcels intended for surface transportation to coincide with the delayed implementation date for ground transportation provided by the DOT. The new standards, including proposed implementation dates, are summarized below.

Mailers should note that any other marking or documentation requirements not specifically referenced in this final rule, including the preparation of a properly completed shipper's declaration, will not be modified or eliminated by any of the revisions described herein. It should also be noted that the adoption of these new standards is not intended to expand or limit the mailable materials or quantities previously permitted under the ORM-D category.

### Background

On January 19, 2011, the DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) published final rule HM-215K (76 FR 3308-3389), which harmonized the requirements of the U.S. Hazardous Materials Regulations (HMR) with international transport requirements. In its **Federal Register** final rule, PHMSA signaled its intent to, among other things, eliminate the "Other Regulated Material" (ORM-D) classification for all forms of transportation. This change will become effective on January 1, 2013, for shipments intended for air transportation and on January 1, 2015, for shipments intended for surface transportation.

In addition to the elimination of the ORM-D category, PHMSA also eliminates the "consumer commodity" category for products in hazard Classes 4, 5, and 8, as well as a portion of hazard Class 9, for all shipments intended for air transportation. This change will become effective on January 1, 2013. After this date, the mailability of materials previously falling within the "consumer commodity" category

must be evaluated based on its eligibility under the limited quantity category in the HMR.

PHMSA expects that the alignment of the existing limited quantity provisions in the HMR with international standards and regulations will enhance safety by facilitating a single uniform system of transporting limited quantity materials. Because of the inherent risk unique to air transportation, PHMSA believes that full harmonization with the International Civil Aviation Organization Technical Instructions (ICAO TI) is necessary with regard to the materials authorized and the guidelines for limited quantities (including consumer commodities) intended for transport by air. The ICAO TI also include specific provisions for air transport of dangerous goods in the mail, which are much more restrictive than the general standards. No dangerous goods are allowed in international mail, with the exception of certain infectious substances, certain patient specimens and certain radioactive materials as noted in section 135 of *Mailing Standards of the United States Postal Service*, International Mail Manual (IMM®); these materials may be sent only by authorized mailers for authorized purposes.

On August 6, 2012, based on the regulations provided by PHMSA in its January 19, 2011, **Federal Register** final rule, the Postal Service revised the DMM to incorporate optional marking standards for parcels containing mailable hazardous materials. These standards provided that mailers could optionally use new marking standards consistent with the new DOT marking requirements, or continue to use the previous USPS® marking standards.

On October 3, 2012, the Postal Service published a proposed rule in the **Federal Register** (77 FR 60334-60339) to announce its proposal for new mailing standards to align with PHMSA regulations provided in the January 19, 2011, notice. The Postal Service received comments in response to this proposed rule, which are summarized later in this notice.

### Air Transport Standards for January 1, 2013

The Postal Service will align its hazardous materials mailing requirements with those of PHMSA by requiring the marking standards described in this final rule on all parcels intended for air transportation. Effective January 1, 2013, the optional marking standards for parcels containing mailable hazardous materials described in the August 6, 2012, DMM revision

will become mandatory for materials intended for air transportation.

Effective January 1, 2013, the Postal Service will begin to categorize hazardous materials meeting the current definition of a mailable ORM-D material within hazard Classes 4, 5, or 8, and portions of 9, using the description "mailable limited quantity;" and will retain the description "consumer commodity" for all other mailable hazard classes. The Postal Service will also revise the DMM to replace the current ORM-D category for parcels containing materials intended for air transportation with the applicable "consumer commodity" or the new "mailable limited quantity" categories.

Mailpieces containing currently authorized air-eligible consumer commodities (ORM-D-AIR) within DOT Class 2.2 (nonflammable, nontoxic gasses), Class 3 (flammable and combustible liquids), Class 6.1 (toxic substances), and Class 9 (miscellaneous) will be reclassified under hazard Class 9 (miscellaneous) instead of their previous "ORM-D-AIR" classification. Mailpieces containing this material will also be required to bear the proper shipping name "Consumer Commodity," the Identification Number "ID8000," and both the DOT square-on-point marking including the symbol "Y" and an approved DOT Class 9 hazardous material warning label. Mailpieces must also bear a shipper's declaration for dangerous goods.

Mailpieces containing mailable air-authorized limited quantity Class 9 materials within UN3077, UN3082, UN3334 and UN3335, will be required to bear the proper shipping name "Consumer Commodity," Identification Number "ID8000," and both the DOT square-on-point marking including the symbol "Y" and an approved DOT Class 9 hazardous material warning label. These are the only Class 9 materials authorized by the DOT to be shipped under the limited quantity classification by domestic air transportation.

Effective January 1, 2013, the Postal Service will also require the use of other DOT hazardous warning labels on packages intended for air transportation, which contain materials that meet the current definition of a mailable ORM-D material in hazard Class 5.1 (oxidizing substances), hazard Class 5.2 (organic peroxides) and hazard Class 8 (corrosives). The DOT will no longer define a consumer commodity category for these particular hazard classes. Similarly, the DOT will not define a consumer commodity in hazard Class 4 (flammable solids); however this will not have an impact for USPS mailers

because the Postal Service does not currently permit hazard class 4 materials in its air transportation networks. These mailpieces will also be required to bear the proper shipping name and Identification Number, as identified in Publication 52 Appendix A, both DOT square-on-point marking (including the symbol “Y”), and the appropriate approved DOT hazardous material warning label. Mailpieces must also bear a shipper’s declaration for dangerous goods.

Before January 1, 2015, mailable hazardous materials intended for surface transportation will continue to be classified using the ORM–D categorization. Until that time, mailers will have the option of continuing to use the current “ORM–D” marking for materials intended for ground transportation, or using the new DOT-authorized “square-on-point” limited quantity marking on parcels containing mailable hazardous materials.

#### Surface Transport Standards for January 1, 2015

The Postal Service plans to implement the final segment of its alignment with PHMSA by eliminating the optional ORM–D markings and categorization for hazardous materials intended for surface transportation on January 1, 2015. The use of ORM–D markings will no longer be permitted for use with any materials being tendered for transport within USPS networks, either by surface or air. After this date, all mailpieces containing hazardous materials will be required to be marked using the appropriate DOT square-on-point marking.

With this revision, mailable limited quantity and mailable consumer commodity materials, when tendered to the Postal Service, must bear an approved DOT square-on-point marking. The use of additional DOT hazardous material warning labels will not be required or permitted on parcels intended for transportation in USPS ground networks.

#### Comments

The Postal Service received three comments in response to the October 3, 2012, proposed rule, with some commenters addressing more than a single issue. All commenters were generally in support of the Postal Service’s actions to align with DOT regulations in regards to the mailing of hazardous materials. These comments are summarized as follows:

*Comment:* One commenter questions why the Postal Service would agree to adopt PHMSA regulations, provided in 49 *Code of Federal Regulations* (CFR)

into their mailing standards when the Postal Service claims to be regulated by 39 CFR.

*Response:* Although Postal Service mailing standards are provided in 39 CFR, the Postal Service attempts to maintain consistency with 49 CFR whenever possible. Generally, Postal Service mailing standards are more restrictive than those provided in 49 CFR, and include many additional limitations and prohibitions not applicable to commercial carriers. One benefit of the Postal Service’s alignment with PHMSA is that it will provide for consistency in the marking requirements for hazardous materials, whether transported through the Postal Service or a commercial carrier. Another benefit to the alignment with PHMSA regulations is the adoption of common categorization and terminology. The Postal Service expects that the use of terminology common to both the DOT and USPS will improve the processing and consistency of rulings on the mailability of hazardous materials and will make these rulings more consistent.

*Comment:* A commenter asks if the Postal Service intends to provide appropriate labeling, marking, and packaging material.

*Response:* Although the Postal Service provides mailing supplies and packaging for customer use with some postal products, it generally does not provide supplies expressly for the purpose of mailing hazardous materials. The Postal Service does not intend to modify its current policy as a result of the changes described in this notice.

*Comment:* A commenter states that the DMM revisions provided by the Postal Service in its October 3, 2012 proposed rule are inconsistent with Publication 52, as it relates to the mailability of UN3175, *solids containing flammable liquids*, materials. The commenter notes that Publication 52 limits the mailing of these materials only to surface transportation.

*Response:* The Postal Service agrees and has chosen not to provide an option for air transportation of these materials. The Postal Service has revised its proposed standards accordingly. Qualifying UN3175 materials may still be shipped via USPS surface transportation.

*Comment:* A commenter states that the mailing standards provided in the October 3, 2012, proposed rule incorrectly imply that all hazardous materials in hazard Classes 2.2, 3, 6.1, and 9 are eligible to be reclassified under Class 9 and permitted to bear the ID8000 identification number, when being shipped through the Postal Service. The commenter recommends

revised language to clarify that this option is applicable only to articles or substances that meet the definition of a consumer commodity in hazard Class 2 (non-toxic aerosols only), Class 3 (packing group II and III only), Division 6.1 (packing group III only), or UN3077 and UN3082 materials that do not have subsidiary risk and are authorized aboard passenger aircraft.

*Response:* It was not the intent of the Postal Service to either limit or expand the group of hazardous materials presently mailable by air transportation. The Postal Service believes that use of the language recommended by the commenter would limit the mailability of some materials currently accepted for air transportation. However, the Postal Service agrees with the commenter that further clarification is necessary to specify that only certain materials and quantities are eligible for air transportation in USPS networks. Therefore, the Postal Service will modify the October 3, 2012, proposed language to specify that only mailable air-eligible consumer commodity materials can be tendered to the Postal Service for air transportation.

*Comment:* A commenter expressed concern that the regulations provided by PHMSA in its January 19, 2011, **Federal Register** final rule relates a false impression that all hazard Class 3, 6.1 and 9 materials, including lithium batteries would be eligible to be reclassified under hazard Class 9 and permitted to bear the ID8000 identification number.

*Response:* Without commenting on the objective of PHMSA relative to the transport of lithium batteries, the Postal Service intends to continue to provide standards unique to the mailing of lithium batteries and solid carbon dioxide (dry ice) and will not provide an option for mailers to classify or mark parcels containing lithium batteries or dry ice as ID8000 materials.

*Comment:* A commenter states that the Postal Service’s January 1, 2015, proposed implementation date for the surface transportation portion of these standards is premature. This commenter states that the HMR allows for materials to be classified and marked as ORM–D for surface transportation until December 31, 2013, and that PHMSA has only proposed to extend the required date for these regulations until January 1, 2015.

*Response:* This commenter is correct in that PHMSA has only proposed to delay their implementation until January 1, 2015, however the Postal Service expects the extension of their implementation date to be adopted. The Postal Service views the timeline for implementation of the standards

relating to surface transportation to be less critical than those for air transportation and has proposed a January 1, 2015, implementation date as the most likely to correspond with the actual PHMSA effective date. However, the Postal Service expects to be able to implement its standards relating to surface transportation either before or after PHMSA's implementation date without significant issues.

**Implementation**

The applicable standards contained in this final rule are effective on January 1, 2013, and will be incorporated into the DMM on January 27, 2013, corresponding with the previously scheduled price change update.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), which is incorporated by reference in the *Code of Federal Regulations*. See 39 CFR part 111.1.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

**PART 111—[AMENDED]**

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

**Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)**

\* \* \* \* \*

**600 Basic Standards for All Mailing Services**

**601 Mailability**

\* \* \* \* \*

**10.0 Hazardous Materials**

**10.1 Definitions**

The following definitions apply:

\* \* \* \* \*

[Revise 10.1c as follows:]

c. *ORM–D (Other Regulated Material) material* is a limited quantity of a hazardous material that presents a limited hazard during transportation due to its form, quantity, and packaging. Not all hazardous materials permitted to be shipped as a limited quantity can qualify as an ORM–D material. The ORM–D category is only applicable for materials intended for ground transportation. Effective January 1, 2015, the ORM–D category will be eliminated for materials intended for surface transportation. After this date, the mailability of materials previously fitting the description of ORM–D must be evaluated based on its eligibility under the applicable consumer commodity or mailable limited quantity categories.

[Revise 10.1d, *Consumer Commodity*, by adding a new last sentence as follows:]

d. \* \* \* The consumer commodity category will not apply to materials, intended for air transportation, in hazard classes 4, 5, and 8, and portions of hazard Class 9.

[Re-sequence the current 10.1e through 10.1i as the new 10.1f through 10.1j, and add a new item 10.1e as follows:]

e. *Mailable Limited Quantity* is a hazardous material in hazard Classes 4, 5, 8 or portions of 9 that presents a limited hazard during transportation (specifically air transport), and is mailable in USPS air networks under certain conditions and in limited quantities.

\* \* \* \* \*

**10.3 USPS Standards for Hazardous Material**

[Revise 10.3 as follows:]

The USPS standards generally restrict the mailing of hazardous materials to ORM–D (permitted for surface transportation only until January 1, 2015), and consumer commodity or mailable limited quantity materials that meet USPS quantity limitations and packaging requirements. All exceptions are subject to the standards in 10.0. Detailed information on the mailability of specific hazardous materials is contained in Publication 52, *Hazardous, Restricted, and Perishable Mail*.

\* \* \* \* \*

**10.4 Hazard Class**

\* \* \* \* \*

EXHIBIT 10.4 DOT HAZARD CLASSES AND MAILABILITY SUMMARY

Class	Hazard class name and division	Transportation method		
		Domestic mail air transportation	Domestic mail surface transportation	International mail

\* \* \* \* \*  
[Revise text for hazard Classes 2 and 3, under the “Domestic Mail Air Transportation” column (only) as follows:]

2 .....	<b>Gases</b> Division— 2.1 Flammable Gases 2.2 Nonflammable, Nontoxic Gases 2.3 Toxic Gases	<i>Division 2.1 and 2.3:</i> Prohibited. <i>Division 2.2:</i> Only mailable air-eligible Consumer Commodity materials per 10.12.2.		
3 .....	<b>Flammable and Combustible Liquids</b>	<i>Flammable liquids:</i> Prohibited. <i>Combustibles:</i> Only mailable air-eligible Consumer Commodity materials per 10.13.3.		

\* \* \* \* \*  
 [Revise text for hazard Classes 5 and 6, under the “Domestic Mail Air Transportation” column (only) as follows:]

5 .....	<b>Oxidizing Substances, Organic Peroxides</b> Division— 5.1 Oxidizing Substances 5.2 Organic Peroxides	Only air-eligible Mailable Limited Quantity materials per 10.15.2.		
6 .....	<b>Toxic Substances and Infectious Substances</b> Division— 6.1 Toxic Substances 6.2 Infectious Substances	Division 6.1: Only mailable air-eligible Consumer Commodity materials per 10.16.2. Division 6.2: Only per 10.17.		

\* \* \* \* \*  
 [Revise text for hazard Class 8, under the “Domestic Mail Air Transportation” column (only) as follows:]

8 .....	<b>Corrosives</b>	Only Mailable Limited Quantity materials per 10.19.2.		
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[Revise text for hazard Class 9, under the “Hazard Class Name and Division” and “Domestic Mail Air Transportation” columns (only) as follows:]

9 .....	<b>Miscellaneous Hazardous Materials</b> ID8000 materials UN3077, UN3082, UN3334, or UN3335 materials	Only mailable air-eligible Consumer Commodity materials per 10.20.		
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\* \* \* \* \*  
**10.7 Warning Labels for Hazardous Materials**

[Revise 10.7 as follows:]  
 With few exceptions as noted in these standards, most hazardous materials acceptable for mailing fall within the current Other Regulated Materials (ORM–D) regulations of 49 CFR 173.144 for materials intended for surface transportation, and the consumer commodity or mailable limited quantity categories for materials intended for air transportation. Mailpieces containing mailable hazardous materials intended for transportation by air are required to bear an approved DOT square-on-point marking under 10.8b and may also be required to bear a specific DOT hazardous material warning label (if required for the hazard class shipped). Mailpieces containing mailable hazardous materials must be marked as required in 10.8 and must bear DOT handling labels (e.g., orientation arrows, magnetized materials) when applicable. Effective January 1, 2015, the ORM–D category will be eliminated for materials intended for surface transportation, and mailpieces containing hazardous materials intended for surface transportation will be required to be marked using the appropriate DOT

square-on-point marking. Also after this date, the mailable of materials previously fitting the description of ORM–D must be evaluated based on its eligibility under the applicable consumer commodity or mailable limited quantity categories.

**10.8 Package Markings for Hazardous Materials**

[Revise 10.8 as follows:]  
 Unless otherwise noted, each mailpiece containing a mailable hazardous material must be plainly and durably marked on the address side with the required shipping name and UN identification number. Mailpieces containing mailable air-eligible hazardous materials intended for air transportation must bear a DOT limited quantity square-on-point marking under 8b. Mailpieces containing mailable hazardous materials intended for surface transportation may be entered and marked under the ORM–D category before January 1, 2015. After this date, all parcels containing mailable hazardous materials must bear the appropriate DOT square-on-point marking and other associated markings when required. The following also applies:  
 a. The use of DOT limited quantity square-on-point markings are required

for mailpieces intended for air transportation and optional (until January 1, 2015) for mailpieces intended for surface transportation (see Exhibit 10.8b). The plain square-on-point marking is used for shipments sent by surface transportation, and the square-on-point marking including the symbol “Y” superimposed in the center is used for shipments sent by air transportation. The following also applies:  
 1. Markings must be durable, legible and readily visible.  
 2. The marking must be applied on at least one side or one end of the outer packaging. The border forming the square-on-point must be at least 2 mm (0.08 inch) in width and the minimum dimension of each side must be 100 mm (3.94 inches), unless the package size requires a reduced size marking of no less than 50 mm (1.97 inches) on each side.  
 3. For surface transportation, the top and bottom portions of the square-on-point and the border forming the square-on-point must be black and the center must be white or of a suitable contrasting background. Surface shipments containing qualifying ORM–D materials and bearing the square-on-point limited quantity marking are not required to be marked with the shipping name and identification number.

4. For transportation by aircraft, the top and bottom portions of the square-on-point and the border forming the square-on-point must be black and the center must be white or of a suitable contrasting background. The symbol "Y" must be black and located in the center of the square-on-point and be clearly visible. Mailpieces intended for transport by air must also be marked with the proper shipping name, identification number, and must also display the appropriate DOT hazardous material warning label (only when required for the hazard class shipped) in accordance with Publication 52.

b. The UN identification number is not required on mailpieces containing ORM-D materials and intended for surface transportation. A mailable ORM-D material must be marked on the address side with "ORM-D" (or marked under 10.8a) immediately following, or below the proper shipping name. The proper shipping name for a mailable ORM-D material is "consumer commodity." The designation "ORM-D" must be placed within a rectangle that is approximately 6.3 mm (¼ inch) larger on each side than the applicable designation. Mailpieces containing ORM-D materials sent as Standard Mail, Parcel Post, Parcel Select, or Package Services must also be marked on the address side as "Surface Only" or "Surface Mail Only."

\* \* \* \* \*

#### 10.9 Shipping Papers for Hazardous Materials

\* \* \* Shipping papers are required as follows:

\* \* \* \* \*

*[Revise 10.9a and 10.9b to update product references as follows:]*

a. *Air transportation requirements.* Except for nonregulated materials sent under 10.17.3 or 10.17.8 and diagnostic specimens sent under 10.17.5, mailpieces containing mailable hazardous materials sent as Express Mail, Priority Mail, First-Class Mail, or First-Class Package Service, must include a shipping paper.

b. *Surface transportation requirements.* Except for nonregulated materials sent under 10.17.3 or 10.17.8 and mailable ORM-D materials, mailpieces containing mailable hazardous materials sent as Standard Mail, Parcel Post, Parcel Select, or Package Services, must include a shipping paper.

#### 10.10 Air Transportation Prohibitions for Hazardous Materials

*[Revise the introductory paragraph of 10.10 to update product references as follows:]*

All mailable hazardous materials sent as Express Mail, Priority Mail, First-Class Mail, or First-Class Package Service, must meet the requirements for air transportation. The following types of hazardous materials are always prohibited on air transportation regardless of class of mail:

\* \* \* \* \*

#### 10.12 Gases (Hazard Class 2)

\* \* \* \* \*

##### 10.12.2 Mailability

*[Revise the third and fourth sentences of 10.12.2 as follows:]*

\* \* \* Flammable gases in Division 2.1 are prohibited in domestic mail via air transportation but are permitted via surface transportation if the material can qualify as an ORM-D material (or after January 1, 2015, a consumer commodity material) and meet the standards in 10.12.3 and 10.12.4. Mailable nonflammable gases in Division 2.2 are generally permitted in the domestic mail via air or surface transportation if the material can qualify as an ORM-D material when intended for surface transportation, or as a consumer commodity material when intended for air transportation, and also meet the standards in 10.12.3 and 10.12.4.

\* \* \* \* \*

##### 10.12.4 Marking

*[Revise the second sentence and add a new third sentence for 10.12.4 as follows:]*

\* \* \* For air transportation, packages must bear the DOT square-on-point marking including the symbol "Y," an approved DOT Class 9 hazardous material warning label, Identification Number "ID8000," and the proper shipping name "Consumer Commodity." Mailpieces must also bear a shipper's declaration for dangerous goods.

#### 10.13 Flammable and Combustible Liquids (Hazard Class 3)

\* \* \* \* \*

##### 10.13.2 Flammable Liquid Mailability

*[Revise the third sentence of the introductory paragraph of 10.13.2 as follows:]*

\* \* \* Other flammable liquid is prohibited in domestic mail via air transportation but is permitted via surface transportation if the material can qualify as an ORM-D material (or after January 1, 2015, a consumer commodity material) and meet the following conditions as applicable:

*[Revise 10.13.2a and 2b as follows:]*

a. The flashpoint is above 20 °F (−7 °C) but no more than 73 °F (23 °C); the

liquid is in a metal primary receptacle not exceeding 1 quart, or in another type of primary receptacle not exceeding 1 pint, per mailpiece; enough cushioning surrounds the primary receptacle to absorb all potential leakage; the cushioning and primary receptacle are packed within a securely sealed secondary container that is placed within a strong outer shipping container; and each mailpiece is plainly and durably marked on the address side with "Surface Only" or "Surface Mail Only" and "ORM-D" immediately following or below the proper shipping name (or with a DOT square-on-point marking under 10.8b).

b. The flashpoint is above 73 °F (23 °C) but less than 100 °F (38 °C); the liquid is in a metal primary receptacle not exceeding 1 gallon, or in another type of primary receptacle not exceeding 1 quart, per mailpiece; enough cushioning surrounds the primary receptacle to absorb all potential leakage; the cushioning and primary receptacle are placed within a securely sealed secondary container that is placed within a strong outer shipping container; and each mailpiece is plainly and durably marked on the address side with "Surface Only" or "Surface Mail Only" and "ORM-D" immediately following or below the proper shipping name (or with a DOT square-on-point marking under 10.8b).

##### 10.13.3 Combustible Liquid Mailability

*[Revise the second sentence of the introductory paragraph of 10.13.3 as follows:]*

\* \* \* Combustible liquid is permitted in domestic mail if the material can qualify as an ORM-D material, when intended for ground transportation or a consumer commodity material, when intended for air transportation, and when the following conditions are met as applicable:

*[Revise 10.13.3a as follows:]*

a. For surface transportation, if the flashpoint is 100 °F (38 °C) but no more than 141 °F (60.5 °C); the liquid is in a metal primary receptacle not exceeding 1 gallon, or in another type of primary receptacle not exceeding 1 quart, per mailpiece; enough cushioning surrounds the primary receptacle to absorb all potential leakage; the cushioning and primary receptacle are packed in a securely sealed secondary container that is placed within a strong outer shipping container; and each mailpiece is plainly and durably marked on the address side with "Surface Only" or "Surface Mail Only" and "ORM-D" immediately following or below the

proper shipping name (or with a DOT square-on-point marking under 10.8b).

[Revise 10.13.3b as follows:]

b. For surface or air transportation, if the flashpoint is above 141 °F (60.5 °C) but no more than 200 °F (93 °C); the liquid is in a primary receptacle not exceeding 1 gallon per mailpiece; enough cushioning surrounds the primary receptacle to absorb all potential leakage; the cushioning and primary receptacle are packed in a securely sealed secondary container that is placed within a strong outer shipping container. For surface transportation, each mailpiece must be plainly and durably marked on the address side with “ORM–D” immediately following or below the proper shipping name; and each piece must be marked on the address side as “Surface Only” or “Surface Mail Only” (or with a DOT square-on-point marking under 10.8b). For air transportation, packages must bear the DOT square-on-point marking including the symbol “Y,” an approved DOT Class 9 hazardous material warning label, Identification Number “ID8000,” the proper shipping name “Consumer Commodity,” and a shipper’s declaration for dangerous goods.

\* \* \* \* \*

**10.14 Flammable Solids (Hazard Class 4)**

\* \* \* \* \*

**10.14.2 Mailability**

[Revise the last sentence of 10.14.2 as follows:]

\* \* \* A flammable solid that can qualify as an ORM–D material (or after January 1, 2015, a mailable limited quantity material) is permitted in domestic mail via surface transportation if the material is contained in a secure primary receptacle having a weight of 1 pound or less; the primary receptacle(s) is packed in a strong outer shipping container with a total weight of 25 pounds or less per mailpiece; and each mailpiece is plainly and durably marked on the address side with “Surface Only” or “Surface Mail Only” and “ORM–D” immediately following or below the proper shipping name (or with a DOT square-on-point marking under 10.8b).

\* \* \* \* \*

**10.15 Oxidizing Substances, Organic Peroxides (Hazard Class 5)**

\* \* \* \* \*

**10.15.2 Mailability**

[Revise 10.15.2 as follows:]

Oxidizing substances and organic peroxides are prohibited in international mail. Class 5 materials are

permitted in domestic mail if the material can qualify as an ORM–D material (until January 1, 2015), when intended for ground transportation; or an air-eligible mailable limited quantity material, when intended for air transportation. Liquid materials must be enclosed within a primary receptacle having a capacity of 1 pint or less; the primary receptacle(s) must be surrounded by absorbent cushioning material and held within a leak-resistant secondary container that is packed within a strong outer shipping container. Solid materials must be contained within a primary receptacle having a weight capacity of 1 pound or less; the primary receptacle(s) must be surrounded with cushioning material and packed within a strong outer shipping container. Each mailpiece may not exceed a total weight of 25 pounds. For surface transportation, each mailpiece must be plainly and durably marked on the address side with “ORM–D” immediately following or below the proper shipping name; and each piece must be marked on the address side as “Surface Only” or “Surface Mail Only” (or with a DOT square-on-point marking under 10.8b). For air transportation, packages must bear the DOT square-on-point marking including the symbol “Y,” the appropriate approved DOT Class 5.1 or 5.2 hazardous material warning label, the identification number, the proper shipping name, and a shipper’s declaration for dangerous goods.

**10.16 Toxic Substances (Hazard Class 6, Division 6.1)**

\* \* \* \* \*

**10.16.2 Mailability**

[Revise the second sentence of 10.16.2 as follows:]

\* \* \* For domestic mail, a Division 6.1 toxic substance or poison that can qualify as an ORM–D material (until January 1, 2015) when intended for ground transportation, or a mailable air-eligible consumer commodity material when intended for air transportation, is permitted when packaged under the applicable requirements in 10.16.4.

\* \* \* \* \*

\* \* \* \* \*

**10.16.4 Packaging and Marking**

The following requirements must be met, as applicable:

[Revise 16.4a as follows:]

a. A toxic substance that can qualify as an ORM–D material (until January 1, 2015) when intended for ground transportation, or a mailable air-eligible consumer commodity material when intended for air transportation, and does

not exceed a total capacity of 8 ounces per mailpiece is permitted if: The material is held in a primary receptacle(s); enough cushioning material surrounds the primary receptacle to absorb all potential leakage; and the cushioning and primary receptacle(s) are packed in another securely sealed secondary container that is placed within a strong outer shipping container. For surface transportation, each mailpiece must be plainly and durably marked on the address side with “ORM–D” immediately following or below the proper shipping name; and each piece must be marked on the address side as “Surface Only” or “Surface Mail Only” (or with a DOT square-on-point marking under 10.8b). For air transportation, packages must bear the DOT square-on-point marking including the symbol “Y,” an approved DOT Class 9 hazardous material warning label, Identification Number “ID8000,” the proper shipping name “Consumer Commodity,” and a shipper’s declaration for dangerous goods.

\* \* \* \* \*

**10.19 Corrosives (Hazard Class 8)**

\* \* \* \* \*

**10.19.2 Mailability**

[Revise the second sentence of the introductory paragraph of 10.19.2 as follows:]

\* \* \* A corrosive that can qualify as an ORM–D material (until January 1, 2015), when intended for ground transportation; or an air-eligible mailable limited quantity material, when intended for air transportation, is permitted in domestic mail via air or surface transportation subject to these limitations:

\* \* \* \* \*

**10.19.3 Marking**

[Revise 10.19.3 as follows:]

For surface transportation, each mailpiece must be plainly and durably marked on the address side with “ORM–D” immediately following or below the proper shipping name; and each piece must be marked on the address side as “Surface Only” or “Surface Mail Only” (or with a DOT square-on-point marking under 10.8b). For air transportation, packages must bear the DOT square-on-point marking including the symbol “Y,” the appropriate approved DOT Class 8 hazardous material warning label, the identification number, the proper shipping name, and a shipper’s declaration for dangerous goods.

\* \* \* \* \*

**10.20 Miscellaneous Hazardous Materials (Hazard Class 9)**

\* \* \* \* \*

**10.20.2 Mailability**

*[Revise the second sentence of 10.20.2 as follows:]*

\* \* \* A miscellaneous hazardous material that can qualify as an ORM-D material (until January 1, 2015) when intended for ground transportation, or a mailable air-eligible consumer commodity material when intended for air transportation, is permitted for domestic mail via air or surface transportation, subject to the applicable 49 CFR requirements.

**10.20.3 Marking**

*[Revise 10.20.3 as follows:]*

For surface transportation, the mailpiece must be plainly and durably marked on the address side with "Surface Only" or "Surface Mail Only" and "ORM-D" immediately following or below the proper shipping name (or with a DOT square-on-point marking under 10.8b). For air transportation, packages must bear the DOT square-on-point marking including the symbol "Y," an approved DOT Class 9 hazardous material warning label, Identification Number "ID8000," the proper shipping name "Consumer Commodity," and a shipper's declaration for dangerous goods.

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

**Stanley F. Mires,**

*Attorney, Legal Policy and Legislative Advice.*

[FR Doc. 2012-28673 Filed 11-27-12; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 180**

[EPA-HQ-OPP-2009-0644; FRL-9366-1]

**Fenpropathrin; Pesticide Tolerances**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for residues of fenpropathrin in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective November 28, 2012. Objections and

requests for hearings must be received on or before January 28, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA-HQ-OPP-2009-0644, is available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001; telephone number: (703) 305-7390; email address: [nollen.laura@epa.gov](mailto:nollen.laura@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information****A. Does this action apply to me?**

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

**B. How can I get electronic access to other related information?**

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at [http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl).

**C. How can I file an objection or hearing request?**

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2009-0644 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before January 28, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA-HQ-OPP-2009-0644, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- **Mail:** OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460-0001.
- **Hand Delivery:** To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at <http://www.epa.gov/dockets/contacts.htm>.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at <http://www.epa.gov/dockets>.

**II. Summary of Petitioned-for Tolerance**

In the **Federal Register** of October 7, 2009 (74 FR 51597) (FRL-8792-7), EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9E7594) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. The petition requested that 40 CFR 180.466 be amended by establishing tolerances for